

CITY OF BROOKLYN

CENTER

Notice is hereby given that a public hearing will be held on the 13th day of November, 2018, at 7:00 p.m. or as soon thereafter as the matter may be heard at City Hall, 6301 Shingle Creek Parkway, to consider an ordinance related to tobacco and tobacco related devices.

Auxiliary aids for handicapped persons are available upon request at least 96 hours in advance. Please notify the City Clerk at 763-5699-3306 to make arrangements.

ORDINANCE NO. 2018-14

AN ORDINANCE

AMENDING CHAPTER 23 OF THE CITY CODE OF ORDINANCES REGARDING TOBACCO AND TOBACCO RELATED PRODUCTS

THE CITY COUNCIL OF THE CITY OF BROOKLYN CENTER DOES ORDAIN AS FOLLOWS:

Article I. Legislative Findings. The City Council of the City of Brooklyn Center hereby finds as follows:

1. The City of Brooklyn Center ("City") recognizes that tobacco use 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 is intended to regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, and to protect minors and young adults against the serious effects associated with use and initiation.

2. The City also recognizes that the use of tobacco products has devastating health and economic consequences. Tobacco use is the foremost preventable cause of premature death in America. It causes half a million deaths annually and has been responsible for 20.8 million premature deaths in the U.S. over the past 50 years since the first Surgeon General's report on smoking in 1964. This leads to more than \$300 billion in health care and lost worker productivity costs each year. In Minnesota, smoking was responsible for \$3.19 billion in excess medical expenditures and the deaths of 6,312 individuals in 2014.

3. The City further recognizes that young people are particularly susceptible to the addictive properties of tobacco products, and are particularly likely to become lifelong users. An estimated 5.6 million youth aged 0 to 17 are projected to die prematurely from a tobacco-related illness if prevalence rates do not change. National data show that about 95 percent of adult smokers begin smoking before they turn 21. The ages of 18 to 21 are a critical period when many smokers move from experimental smoking to regular, daily use. Electronic delivery device use among minors has recently tripled and is shown to be on the rise among youth. Young minds are particularly susceptible to the addictive properties of nicotine. As a result, approximately 3 out of 4 teen smokers end up smoking into adulthood.

4. In 2015, the Institute of Medicine concluded that raising the minimum legal sales age for tobacco products nationwide will reduce tobacco initiation, particularly among adolescents aged 15 to 17, improve health across the lifespan, and save lives; and that raising the minimum legal sales age for tobacco products nationwide to 21 would, over time, lead to a 12 percent decrease in smoking prevalence. The Institute of Medicine also predicts that raising the minimum legal sales age for tobacco products nationwide to 21 would result in 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost for those born between 2000 and 2019, and would result in near immediate reductions in preterm birth, low birth weight, and sudden infant death syndrome.

5. Cigar and pipe smokers are more than twice as likely to have decreased lung function compared to non-smokers. Cigar and pipe smokers who also smoke cigarettes may triple their risk of decreased lung function.

6. Scientific evidence on the toxicity of secondhand tobacco smoke is both overwhelming and indisputable. The complex mixture of gases and particles that make up secondhand smoke (also known as environmental tobacco smoke) contains at least 250 chemicals known to be lethal, including more than 50 that can cause cancer. Medical authorities from around the world have concluded that secondhand smoke exposure causes heart disease, stroke, respiratory disease and lung cancer, has immediate adverse effects on the cardiovascular system, and causes sudden infant death syndrome, acute respiratory infections, ear infections, and asthma attacks in children.

7. Tobacco industry documents and marketing and public health research reveal that tobacco companies have used fruit, candy, and alcohol flavors as a way to target youth and young adults. The presence of flavors such as menthol in tobacco products can make it more difficult for youth, young adults, and adult tobacco users to quit.

8. 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); a BlueCross BlueShield of Minnesota report, "Health Care Costs and Smoking in Minnesota: The Bottom Line" (2017); the Institute of Medicine in their study, "Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products" (2015); the Centers for Disease Control and Prevention in their studies, "Tobacco Use Among Middle and High School Students—United States, 2011–2015," and "Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997"; and of the following scholars: Xin Xu et al., "Annual Healthcare Spending Attributable to Cigarette Smoking: An Update, Am. J. Prev. Med. 48(3): 326-33 (Mar. 2015); Giovino GA, "Epidemiology of Tobacco Use in the United States," Oncogene (2002) 21, 7326-40; Khuder SA, 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, WJ, "Age of Smoking Initiation: Implications for Quitting," Health Reports 9(4):39-46, Spring 1998; Everett SA, et al., "Initiation of Cigarette Smoking and Subsequent Smoking Behavior Among U.S. High School Students," Preventive Medicine, 29(5):327-33, November 1999; and Rodriguez J., Jiang R, Johnson WC, MacKenzie BA, Smith LJ, Barr RG: The Association of Pipe and Cigar Use With Cotinine Levels, Lung Function, and Airflow Obstruction: A Cross-sectional Study; Ann Intern Med. 2010;152:201-210 copies of which are adopted by reference.

9. The City determines that taking action to protect youth and to limit access to tobacco is an important public health issue and it was the first city in the state of Minnesota to set a minimum price for cigars as to curb the appeal of these products to youth and reduce the number of youth who initiate tobacco use.

10. The City's action paved the way for five more Minnesota communities, including Minneapolis and St. Paul, to set a minimum price for cigars with the shared goal of youth tobacco prevention.

11. The City determines that e-delivery products and e-liquids are particularly attractive to youth and that steps are needed to limit youth exposure and access to such products.

12. The City values youth and seeks their input in order to positively raise awareness and seek solutions to problems facing youth, such as tobacco industry targeting and youth tobacco use.

13. The City's mission is to ensure an attractive, clean, safe, and inclusive community that enhances the quality of life for all people, and preventing youth tobacco use helps achieve these goals.

14. Sections 23-101 through 23-108 and the amendments contained herein are intended to regulate the sale of tobacco, 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 effects associated with use and initiation, 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.

Article II. Brooklyn Center City Code, Section 23-101 is hereby amended as follows:

Section 23-101. LICENSE REQUIRED. No person shall directly or indirectly, or by means of any device, keep for retail sale, sell at retail, or otherwise dispense any tobacco-related covered product at any place in the city of Brooklyn Center unless a license therefor shall first have been obtained as provided in Sections 23-101 through 23-108.

Article III. Brooklyn Center City Code, Section 23-102 setting out definitions is amended as follows and by renumbering the provisions in this Section as needed:

Section 23-102. 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 Sections 23-101 through 23-108, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

2. "Compliance checks" means the system the City uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery devices covered products are following and complying with the requirements of Sections 23-101 through 23-108. Compliance checks shall involve the use of minors persons under the age of 21 as authorized by Sections 23-101 through 23-108. Compliance checks shall also mean the use of minors persons under the age of 21 who attempt to purchase tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices covered products 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 covered products.

3. "Covered products" means any tobacco, tobacco-related device, electronic delivery device, e-liquid, or nicotine or lobelia delivery product as those terms are defined in this section.

3.4. "Electronic delivery device" shall mean an electronic product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person that is designed to use, or that uses, e-liquid to simulate smoking in the delivery of nicotine or any other substance through inhalation of the aerosol or vapor produced from the product substance. Electronic delivery devices shall include any component part of such a product whether or not sold separately. Electronic delivery devices shall not include any product that has been approved or otherwise certified by the United States Food and Drug Administration for legal sales for use in tobacco cessation treatment or other medical purposes, and is being marketed and sold solely for that approved purpose.

"E-liquid" means any liquid intended for human consumption through an electronic delivery device used to simulate smoking in the delivery of nicotine, lobelia, or a product containing the taste or smell related to chocolate, cocoa, mint, menthol, wintergreen, vanilla, honey, fruit, or any candy, dessert, alcoholic beverage, herb, or spice through inhalation of the aerosol or vapor produced from the liquid. E-liquid shall not include any product that has been approved or otherwise certified by the United States Food and Drug Administration for legal sales for use in tobacco cessation treatment or other medical purposes, and is being marketed and sold solely for that approved purpose.

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

"Nicotine or lobelia delivery product" means any product containing or delivering nicotine, or any synthetic variation thereof, or lobelia 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 product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation or for other medical purposes, and is being marketed and sold solely for that approved purpose.

9. "Retail establishment" means any place of business where tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices covered products are available for sale to the general public. The phrase term shall include, but is not be limited to, grocery stores, convenience stores, restaurants, and drug stores.

11. "Self-service merchandising" means open displays of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices covered products in any manner where any person shall have access to the tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices, covered products 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 covered product 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 covered product between the clerk and the customer.

14. "Tobacco-related devices" means and includes any tobacco product as well as a pipe, rolling papers, or other device intentionally designed or intended to be used in a manner that enables the chewing, sniffing or smoking of tobacco or tobacco products including electronic delivery devices. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately.

15. "Vending machine" means any mechanical, electric or electronic, or other type of device that 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 covered product.

Article IV. Brooklyn Center City Code, Section 23-103 is hereby amended as follows:

Section 23-103. LICENSE REQUIRED.

1. Generally. No person may directly or indirectly, or by means of any device keep for retail sale, sell at retail, offer to sell or otherwise dispose of any tobacco, tobacco products, tobacco-related devices, or electronic delivery device covered product at any place in the City unless a license has first been issued by the City as provided in this Section.

2. Application. An application for a license to sell tobacco, tobacco products, tobacco-related devices, and electronic delivery devices covered 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.

3. Action. Upon receipt of a completed application, the City Clerk shall forward the application to the police department for investigation. The police department shall conduct an investigation of the applicant and application regarding the fitness of the applicant to hold a license pursuant to the standards set forth in Sections 23-101 through 23-108, and report the results of its investigation to the City Clerk within 30 days of receipt of the application. The City Clerk shall forward the application for consideration by the City Council.

4. Fees. No application for a license under Sections 23-101 through 23-108 shall be accepted until the appropriate license or investigation fee is paid in full. The fee(s) shall be established by the City Council by resolution from time to time.

5. Sanctions for violation. Sanctions for violating a provision of Sections 23-101 through 23-108 shall be set by the City Council at the penalty phase and shall not be less than state mandated guidelines.

6. Transfers. All licenses issued under Sections 23-101 through 23-108 shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued.

7. 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 Sections 23-101 through 23-108.

8. Display. All licenses shall be posted and displayed in plain view of the general public on the license premises.

9. Term and Renewals. Every such license shall expire on December 31 next after its issuance. A fee for the renewal of any license issued under Sections 23-101 through 23-108 shall be paid to the City Clerk with the renewal application. Applications for renewal must be submitted by November 30 of the year prior to the license year.

10. Issuance is a privilege and not a right. The issuance of a license is a privilege and does not entitle the holder to an automatic renewal of the license.

11. Maximum number of licenses. The maximum number of licenses issued by the City in any year is limited to 15, except that any licensee holding a valid license as of October 1, 2018 is permitted to retain and renew said license. If the maximum number of licenses has already been issued, a licensee that allows its license to expire or has its license revoked shall not be eligible for a new license. Persons desiring to apply for a license may be placed on a waiting list and be eligible to apply on a first-come, first-serve basis once the number of issued licenses falls below the maximum number allowed. Notwithstanding the maximum number of allowed licenses, an applicant who purchases a business location holding a current license shall be allowed to apply for and obtain, if eligible, a new license for the business location provided it is obtained within the same license year as the current license.

12. Instructional Program. All licensees shall ensure that all employees engaged with customers at the point of sale go through a training program on the legal requirements relating to the sale of covered products and the possible consequences for violations. Any training program must be pre-approved by the City. Licensees must maintain and provide to the City documentation demonstrating compliance at the time of renewal or whenever requested during the license term.

Article V. Brooklyn Center City Code, Section 23-104 is hereby amended as follows:

Section 23-104. RESTRICTIONS

1. The following shall be grounds for denying the issuance of or renewal of a license under Sections 23-101 through 23-108:

a. 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 tobacco products, or tobacco-related devices covered products, or has had a license to sell tobacco products or tobacco-related covered products revoked or suspended within the past five years.

b. The applicant fails to provide any information required on the application, or provides false or misleading information.

2. No license may be issued or renewed:

a. To any applicant who is under 18 21 years of age.

b. To any applicant who is prohibited by federal, state, or other local law, ordinance, or regulation from holding such a license.

c. To any applicant who has fees or charges to the City or the County that are due and unpaid.

d. For any premises for which property taxes or City utility charges are due and unpaid.

Article VI. Brooklyn Center City Code, Section 23-105 is hereby amended as follows:

Section 23-105. PROHIBITED SALES;

1. It shall be a violation of Sections 23-101 through 23-108 for any person to sell or offer to sell any tobacco, tobacco product, or tobacco-related device covered product:

a. To a minor;

ba. By a means of any type of vending machine;

cb. By self-service displays;

dc. As by means of looses;

ed. If the tobacco or tobacco products contain opium, morphine, jimsonweed, belladonna, strychnos, cocaine, marijuana, or other delirious 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;

fe. To any other person, in any other manner or form prohibited by federal or state law or regulation, or by local ordinance.

2. No person shall sell any covered product to any person under the age of 21.

a. Age verification. Licensees must verify by means of government issued photographic identification that the purchaser of the covered product is at least 21 years of age. That the person appeared to be old enough to lawfully purchase a covered product does not constitute a defense to a violation of this Section.

b. Signage. Notice of the legal sales age and age verification requirement must be posted at each location where covered 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 of covered products.

3. No person shall sell or offer for sale any electronic delivery device or e-liquid to any person unless the sale is on the premises of a retail establishment that:

a. Prohibits persons under the age of 21 from entering at all times; and

b. Derives at least 90 percent of its revenues from the sale of covered products. Any retail establishment that sells electronic delivery devices or e-liquids must provide to the City upon request financial records that document annual sales.

4. It shall be a violation of Sections 23-101 through 23-108 for any retail establishment to sell, offer for sale, or distribute a single cigar unless the cigar is sold in an original package of at least five cigars, provided that:

a. This restriction shall not apply to any sale, offer to sell, or distribution of a single cigar that has a retail sales price of no less than \$2.10 before sales tax.

b. Discounts to which price promotions or discounts apply shall not be excluded from this restriction.

Article VII. Brooklyn Center City Code, Section 23-106 is hereby amended as follows:

Section 23-106. SMOKING PROHIBITED. Smoking shall not be permitted in, and no person shall smoke in, any licensed premises.

Smoking in any licensed premises for the purpose of sampling a covered product is prohibited under this Section.

Article VIII. Brooklyn Center City Code, Section 23-106 is hereby amended as follows:

Section 23-107. COMPLAINTS 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 twice per year, the City shall conduct compliance checks by engaging with the written consent of their parents or guardians, minors persons over the age of 15 years but less than 18 21 years to enter the licensed premise to attempt to purchase tobacco, tobacco products or tobacco-related devices covered products. Minors Persons under the age of 21 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 or tobacco-related devices when those items are obtained as a part of the compliance check. No minor person used in compliance checks shall attempt to use a false identification misrepresenting the minor's person's age, and all minors persons lawfully engaged in a compliance check shall answer all questions about the minor's person's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she the person is asked.

Article IX. Brooklyn Center City Code, Section 23-108 is hereby amended as follows:

Section 23-108. VIOLATION AND PENALTIES.

1. Licensees responsible. All licensees are responsible for the actions of their employees in regard to the sale of covered products on the licensed premises and the sale of a covered product by an employee shall be considered a sale by the licensee for the purposes of constituting a license violation under this Section.

12. Misdemeanor prosecution. Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of Sections 23-101 through 23-108.

23. Administrative penalties.

a). Licensees. Administrative Penalties.—Licensees: If a licensee or employee of a licensee sells tobacco covered products to a person under the age of 18 21 years, or violates any other provision of Sections 23-101 through 23-108, the licensee shall be charged an administrative penalty of \$490 \$200. An administrative penalty of \$200 \$500 shall be imposed for a second violation at the same location within 24 months after the initial violation. For a third or subsequent violation at the same location within 24 months after the initial violation, an administrative penalty of \$250 \$750 shall be imposed, and the licensee's authority to sell tobacco products at that location shall be suspended for not less than seven days 30 days. Upon a fourth violation, the license will be revoked.

b). Other individuals. Other individuals, other than minors regulated by Sections 23-104 through 23-108, found to be in violation of Sections 23-101 through 23-108 shall be charged an administrative fine of \$50.00.

c) 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 a tobacco-related education classes, diversion programs, community services, or another penalty that the City believes will be appropriate and effective.—The administrative fine or other penalty shall be established by City Council ordinance upon the City Council's consultation with interested parties of the courts, educators, parents and children to determine an appropriate penalty for minors in the City. This administrative fine or other penalty may also be established from time to time by the ordinance or resolution establishing fees and charges, as it may be amended from time to time.

dc). 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 more severe penalty shall prevail.

4.3. License revocation, suspension, or non-renewal. In addition to misdemeanor prosecution and administrative penalties, violation of Section 23-101 through 23-108 is grounds for revocation or suspension under Section 23-006 or nonrenewal under Section 23-104.

Article X. Brooklyn Center City Code, Chapter 23 is hereby amended by adding a new Section 23-014 as follows:

Section 23-014. SEVERABILITY. If any Section or provision of the Chapter is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect any other Section or provision that can be given force and effect without the invalidated Section or provision.

Article XI. This Ordinance shall become effective after adoption and upon thirty (30) days following its legal publication.

Adopted this _____ day of _____, 2018.

Tim Willson, Mayor

ATTEST: City Clerk

(Strikeout indicates matter to be deleted, double underline indicates new matter.)

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constitute a defense to a violation of this Section.

b. Signage. Notice of the legal sales age and age verification requirement must be posted at each location where covered 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 of covered products.

3. No person shall sell or offer for sale any electronic delivery device or e-liquid to any person unless the sale is on the premises of a retail establishment that:

a. Prohibits persons under the age of 21 from entering at all times; and

b. Derives at least 90 percent of its revenues from the sale of covered products. Any retail establishment that sells electronic delivery devices or e-liquids must provide to the City upon request financial records that document annual sales.

4. It shall be a violation of Sections 23-101 through 23-108 for any retail establishment to sell, offer for sale, or distribute a single cigar unless the cigar is sold in an original package of at least five cigars, provided that:

a. This restriction shall not apply to any sale, offer to sell, or distribution of a single cigar that has a retail sales price of no less than \$2.10 before sales tax.

b. Discounts to which price promotions or discounts apply shall not be excluded from this restriction.

Article VII. Brooklyn Center City Code, Section 23-106 is hereby amended as follows:

Section 23-106. SMOKING PROHIBITED. Smoking shall not be permitted in, and no person shall smoke in, any licensed premises.

Smoking in any licensed premises for the purpose of sampling a covered product is prohibited under this Section.

Article VIII. Brooklyn Center City Code, Section 23-106 is hereby amended as follows:

Section 23-107. COMPLAINTS 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 twice per year, the City shall conduct compliance checks by engaging with the written consent of their parents or guardians, minors persons over the age of 15 years but less than 18 21 years to enter the licensed premise to attempt to purchase tobacco, tobacco products or tobacco-related devices covered products. Minors Persons under the age of 21 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 or tobacco-related devices when those items are obtained as a part of the compliance check. No minor person used in compliance checks shall attempt to use a false identification misrepresenting the minor's person's age, and all minors persons lawfully engaged in a compliance check shall answer all questions about the minor's person's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she the person is asked.

Article IX. Brooklyn Center City Code, Section 23-108 is hereby amended as follows:

Section 23-108. VIOLATION AND PENALTIES.

1. Licensees responsible. All licensees are responsible for the actions of their employees in regard to the sale of covered products on the licensed premises and the sale of a covered product by an employee shall be considered a sale by the licensee for the purposes of constituting a license violation under this Section.

12. Misdemeanor prosecution. Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of Sections 23-101 through 23-108.

23. Administrative penalties.

a). Licensees. Administrative Penalties.—Licensees: If a licensee or employee of a licensee sells tobacco covered products to a person under the age of 18 21 years, or violates any other provision of Sections 23-101 through 23-108, the licensee shall be charged an administrative penalty of \$490 \$200. An administrative penalty of \$200 \$500 shall be imposed for a second violation at the same location within 24 months after the initial violation. For a third or subsequent violation at the same location within 24 months after the initial violation, an administrative penalty of \$250 \$750 shall be imposed, and the licensee's authority to sell tobacco products at that location shall be suspended for not less than seven days 30 days. Upon a fourth violation, the license will be revoked.

b). Other individuals. Other individuals, other than minors regulated by Sections 23-104 through 23-108, found to be in violation of Sections 23-101 through 23-108 shall be charged an administrative fine of \$50.00.

c) 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 a tobacco-related education classes, diversion programs, community services, or another penalty that the City believes will be appropriate and effective.—The administrative fine or other penalty shall be established by City Council ordinance upon the City Council's consultation with interested parties of the courts, educators, parents and children to determine an appropriate penalty for minors in the City. This administrative fine or other penalty may also be established from time to time by the ordinance or resolution establishing fees and charges, as it may be amended from time to time.

dc). 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 more severe penalty shall prevail.

4.3. License revocation, suspension, or non-renewal. In addition to misdemeanor prosecution and administrative penalties, violation of Section 23-101 through 23-108 is grounds for revocation or suspension under Section 23-006 or nonrenewal under Section 23-104.

Article X. Brooklyn Center City Code, Chapter 23 is hereby amended by adding a new Section 23-014 as follows:

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