

ORDINANCE NO. 961

**CITY OF MOUNDS VIEW
COUNTY OF RAMSEY
STATE OF MINNESOTA**

**AN ORDINANCE AMENDING TITLE 500, CHAPTER 512
OF THE MOUNDS VIEW CITY CODE
RELATING TO TOBACCO LICENSE REGULATIONS**

THE CITY OF MOUNDS VIEW ORDAINS:

SECTION 1. The City Council of the City of Mounds View hereby amends Title 500, Chapter 512 of the Mounds View Municipal Code by adding the double-underlined material and deleting the ~~stricken~~ material as follows:

512.01: **PURPOSE AND INTENT:** ~~Because the City recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess and use tobacco, tobacco products, tobacco-related devices, and electronic 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 18 years and that those persons who reach the age of 18 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 ordinance shall be intended to regulate the sale, possession and use of tobacco, tobacco products, tobacco related devices, and electronic 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 electronic 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 M.S. § 144.391, as it may be amended from time to time. In making these findings, the City Council accepts the conclusions and recommendations of Center for Disease Control in their study "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 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, copies of which are adopted by reference. Because the City of Mounds View recognizes that the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 18 violates both state and federal laws; and because studies, which the city accepts and adopts, have shown that youth use of any commercial tobacco product has increased to 26.4% in Minnesota; and because nearly 90% of people who use tobacco start before they have reached the age of 18 years, and that almost no one starts using tobacco after age 25; and because studies show that youth and~~

young adults are especially susceptible to commercial tobacco product availability and advertising at tobacco retail environments; and because commercial tobacco use has been shown to be the cause of many serious health problems which subsequently place a financial burden on all levels of government, this ordinance is intended to regulate the sale of commercial 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 health effects associated with use and initiation, and to further the official public policy of the state to prevent young people from starting to smoke, as stated in Minn. Stat. § 144.391, as it may be amended from time to time.

In making these findings, the City Council accepts the conclusions and recommendations of: the U.S. Surgeon General reports, *E-cigarette Use Among Youth and Young Adults* (2016), *The Health Consequences of Smoking—50 Years of Progress* (2014) and *Preventing Tobacco Use Among Youth and Young Adults* (2012); the Centers for Disease Control and Prevention in their studies, *Tobacco Use Among Middle and High School Students — United States, 2011– 2015*(2016), and *Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997*(1998); and of the following scholars in these scientific journals: Chen, J., & Millar, W. J. (1998). Age of smoking initiation: implications for quitting. *Health Reports*, 9(4), 39-46; D’Avanzo, B., La Vecchia, C., & Negri, E. (1994). Age at starting smoking and number of cigarettes smoked. *Annals of Epidemiology*, 4(6), 455–459; Everett, S. A., Warren, C. W., Sharp, D., Kann, L., Husten, C. G., & Crossett, L. S. (1999). Initiation of cigarette smoking and subsequent smoking behavior among U.S. high school students. *Preventive Medicine*, 29(5), 327–333; Giovino, G. A. (2002). Epidemiology of tobacco use in the United States. *Oncogene*, 21(48), 7326–7340; Khuder, S. A., Dayal, H. H., & Mutgi, A. B. (1999). Age at smoking onset and its effect on smoking cessation. *Addictive Behaviors*, 24(5), 673–677; Luke, D. A., Hammond, R. A., Combs, T., Sorg, A., Kasman, M., Mack-Crane, A., Henriksen, L. (2017). Minnesota Department of Health. (2018). *Data Highlights from the 2017 Minnesota Youth Tobacco Survey*. Saint Paul, MN; Tobacco Control Legal Consortium. (2006). Xu, X., Bishop, E. E., Kennedy, S. M., Simpson, S. A., & Pechacek, T. F. (2015) Annual healthcare spending attributable to cigarette smoking: an update. *American Journal of Preventive Medicine*, 48(3), 326–333, copies of which are adopted by reference.

512.02: **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 chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Subd. 1. **COMPLIANCE CHECKS.** The system the City uses to investigate and ensure that those authorized to sell ~~tobacco, tobacco products, tobacco related devices, and electronic delivery devices~~ licensed products are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of ~~minors~~ persons under 21 as authorized by this ordinance. Compliance checks shall also mean the use of ~~minors~~ persons under 21 who attempt to purchase ~~tobacco, tobacco products, tobacco related devices, and electronic delivery devices~~ licensed 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 electronic delivery devices~~ licensed products.

Subd. 2. INDIVIDUALLY PACKAGED. The practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped 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.

Subd. 3. 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

Subd. 4. LOOSIES. 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 \$2.00 per cigar.

~~Subd. 5. MINOR. Any natural person who has not yet reached the age of 18 years.~~

Subd. 5. LICENSED PRODUCTS. Licensed Products shall mean the term that collectively refers to any tobacco product, tobacco -related device, or electronic delivery device.

Subd. 6. MOVEABLE PLACE OF BUSINESS. Any form of business operated out of a 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.

Subd. 7. ELECTRONIC DELIVERY DEVICE. "Electronic Delivery Device" shall mean any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device shall include any component part of such a product whether or not sold separately. Electronic delivery device 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.

Subd. 8. RETAIL ESTABLISHMENT. 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. The phrase shall include but not be limited to grocery stores, convenience stores, restaurants, and drug stores

Subd. 9. SALE. Any transfer of goods for money, trade, barter or other consideration.

- Subd. 10. SELF-SERVICE MERCHANDISING. Open displays of tobacco, tobacco products, tobacco-related devices, or electronic delivery devices in any manner where any person shall have access to the tobacco, tobacco products, tobacco-related devices, or electronic 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 electronic 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.
- Subd. 11. SMOKING. Inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other lighted or heated ~~tobacco or plant~~ product, whether natural or synthetic, containing, made, or derived from nicotine, tobacco, marijuana, or other plant, that is or ~~inhaling or exhaling vapor from any electronic delivery device. Smoking shall include carrying a lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation. Smoking also includes carrying or using an activated electronic delivery device.~~
- Subd. 12. TOBACCO or TOBACCO PRODUCTS. Tobacco and tobacco products includes ~~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; 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 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.
- Subd. 13. TOBACCO-RELATED DEVICES. Tobacco-related devices includes any ~~tobacco product as well as a~~ pipe, rolling papers, ashtray, or other device intentionally designed or intended to be used with tobacco products. ~~in a manner which enables the chewing, sniffing or smoking of tobacco or tobacco products. Tobacco related devices shall include components of tobacco related devices which may be marketed or sold separately.~~
- Subd. 14. VENDING MACHINE. 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.

512.03: **LICENSE:**

- Subd. 1. License required. No person shall sell or offer to sell any ~~tobacco, tobacco products, tobacco-related device, or electronic delivery device~~ licensed products without first having obtained a license to do so from the City.

- Subd. 2. Application. An application for a license to sell tobacco, tobacco products, tobacco-related devices, or electronic 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 City Council for action at its next regularly scheduled City Council meeting. If the City 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.
- Subd. 3. Action. The City Council may either approve or deny the license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council shall approve the license, the City Administrator shall issue the license to the applicant. If the City 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 City Council's decision.
- Subd. 4. Term. The license is effective from July 1st to June 30th of each year.
- Subd. 5. Revocation or suspension. Any license issued under this section may be revoked or suspended as provided in Section 512.12.
- Subd. 6. Transfers. All licenses issued under this Chapter 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 City Council.
- Subd. 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 this section.
- Subd. 8. Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.
- Subd. 9. Renewals. The renewal of a license issued under this section shall be handled in the same manner as the original application.
- Subd. 10. Issuance as privilege and not a right. The issuance of a license issued under this section 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.
- Subd. 11. Proximity to youth-oriented facilities. No license shall be granted pursuant to this Chapter to any person for any retail sales of ~~tobacco, tobacco products, tobacco-related devices, and electronic delivery devices~~ licensed products within 1,000 feet of any school, playground, house of worship, or youth-oriented facility, as measured by the shortest line

between the space to be occupied by the proposed licensee and the occupied space of the school, playground, house of worship, or youth-oriented facility, unless that person has been in the business of selling such products in that location before the date this Chapter was enacted into law for at least one year. For the purpose of this section, a youth-oriented facility is defined to include any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or which primarily sells, rents, or offers services or products that are consumed or used primarily by persons under the age of 21.

Subd. 12. Proximity to other tobacco retailers. No license shall be granted pursuant to this Chapter to any person for any retail sales ~~tobacco, tobacco products, tobacco-related devices, and electronic delivery devices~~ licensed products within 2,000 feet of any other establishment holding such a license, as measured by the shortest line between the space to be occupied by the proposed licensee and the occupied space of the nearest existing licensee, unless that person has been in the business of selling such products in that location before the date this section was enacted into law for at least one year.

Subd. 13. Proximity limitation. Subdivisions 11 and 12 of Section 512.03 shall only apply to new licenses approved after January 1, 2012. Subdivisions 11 of 12 of Section 512.03 shall not apply to renewals and approved transfers.

Subd. 14. Smoking.

a. Smoking shall not be permitted and no person shall smoke within the indoor area of any retail establishment with a tobacco retailer license. Smoking for the purposes of sampling ~~tobacco, tobacco products, tobacco-related devices, and electronic delivery devices~~ licensed products is prohibited.

b. Notwithstanding paragraph (a), pursuant to Minnesota Statutes, Section 144.4167, subdivision 4, a cigar may be lit in a retail establishment if all of the following circumstances are met:

1. The smoking is by a customer or potential customer, who is not ~~a minor~~ under the age of 21, for the specific purpose of sampling cigars;
2. The retail establishment has an entrance door opening directly to the outside;
3. The retail establishment is not a tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license; and
4. The retail establishment derives more than 90 percent of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental.

c. Any cigar lighting allowed under paragraph (b) shall be prohibited in the licensee's retail establishment if the licensee transfers title to, relinquishes management or control, sells the retail establishment, or the licensee's tobacco license is suspended or revoked by the City.

Subd. 15. 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 thirty calendar days before being reused.

d. The licensee must post a sign at the front entrance that prohibits selling ~~tobacco~~ related-licensed products to ~~minors~~ persons under the age of 21.

e. The licensee must fully cooperate with representatives from the City of Mounds View 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 may not supply matches to non-purchasing customers.

h. Each day of business, the licensee must inspect the entrances of the retail establishment for litter and properly dispose of such litter.

i. The licensee must promptly remove any graffiti on the exterior of the retail establishment.

512.04: **FEES:** No license shall be issued under this Chapter until the appropriate license fee shall be paid in full. The fee for a license under this Chapter shall be established in the City's Fee Schedule, as it may be amended from time to time.

512.05: **BASIS FOR DENIAL OF LICENSE:**

Subd. 1. Grounds for denying the issuance or renewal of a license under this chapter include but are not limited to the following:

- a. The applicant is under the age of ~~18~~21 years.
 - b. 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, tobacco products, tobacco-related devices, or electronic delivery devices.
 - c. The applicant has had a license to sell ~~tobacco, tobacco products, tobacco-related devices, or electronic delivery devices~~ licensed products revoked within the preceding 12 months of the date of application.
 - d. The applicant fails to provide any information required on the application, or provides false or misleading information.
 - e. The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a license.
 - f. The applicant is not of good moral character.
- Subd. 2. 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.
- Subd. 3. 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 chapter.

512.06: **PROHIBITED SALES:** It shall be a violation of this Chapter for any person to sell or offer to sell any ~~tobacco, tobacco product, tobacco related device, or electronic delivery device~~ licensed products:

- Subd 1. To any person under the age of ~~18~~21 years.
- Subd. 2. By means of any type of vending machine.
- Subd. 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 electronic delivery device~~ licensed product and whereby there is not a physical exchange of the ~~tobacco, tobacco product, tobacco-related device, or electronic delivery device~~ licensed product between the licensee, or the licensee's employee, and the customer.
- Subd. 4. By means of loosies as defined in Section 512.02.
- Subd. 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.

Subd. 6. By any other means, to any other person, on in any other manner or form prohibited by federal, state or other local law, ordinance provision, or other regulation.

Subd. 7. Such sales are prohibited before 10:00 A.M. and after 10:00 P.M. at any retail establishment that derives more than 90 percent of its gross revenue from the sale of ~~tobacco, tobacco-related products, and tobacco-related devices~~ licensed products.

512.07: **SELF-SERVICE SALES:** It shall be unlawful for a licensee under this chapter to allow the sale of ~~tobacco, tobacco products, tobacco-related devices, or electronic delivery devices~~ licensed products by any means where by the customer may have access to those items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the ~~tobacco, tobacco products, tobacco-related devices, or electronic delivery devices~~ licensed products between the licensee or his or her clerk and the customer. All ~~tobacco, tobacco products, tobacco-related devices, or electronic delivery devices~~ licensed products shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling ~~tobacco, tobacco products, tobacco-related devices, or electronic delivery devices~~ licensed products at the time this Chapter is adopted shall comply with this section within 90 days following the effective date of this Chapter.

512.08: **RESPONSIBILITY:** All licensees under this Chapter shall be responsible for the actions of their employees in regard to the sale of ~~tobacco, tobacco products, tobacco-related devices, or electronic delivery devices~~ licensed products on the licensed premises, and the sale of 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 clerk to whatever penalties are appropriate under this Chapter, state or federal law, or other applicable law or regulation.

512.09: **COMPLIANCE CHECKS AND INSPECTIONS:** All licensed premises shall be open to inspection by the police department 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 from time to time but at least twice per year. The City will conduct at least one compliance check that involves the participation of a person between the ages of 15 and 17 and at least one compliance check that involves the participation of a person between the ages of 18 and 20 to enter licensed premises to attempt to purchase licensed products. ~~by engaging, with the~~ Prior written consent to participate is required of their parents or guardians; ~~for persons~~ minors over the age of 15 years but less than 18 years. Persons under the age of 21 will ~~to~~ enter the licensed premise to attempt to purchase ~~tobacco, tobacco products, tobacco-related devices, or electronic delivery devices.~~ Minors used for the purpose of compliance checks ~~licensed products and~~ shall be supervised by city designated law enforcement officers or other designated city personnel. Persons under the age of 21 ~~Minors used for compliance checks~~ shall not be guilty of unlawful possession of ~~tobacco, tobacco products, tobacco-related devices, or electronic delivery devices~~ licensed products when those items are obtained as a part of the compliance check. No ~~minor~~ persons under the age of 21 used in compliance checks shall attempt to use a false identification misrepresenting

their ~~minor's~~ age, and all ~~minors~~ persons under the age of 21 lawfully engaged in a compliance check shall answer all questions about their ~~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 Chapter 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.

512.10: **OTHER ILLEGAL ACTS:** Unless otherwise provided, the following acts shall be a violation of this Chapter:

Subd. 1. ~~Illegal sales. It shall be a violation of this Chapter for any person to sell or otherwise provide any tobacco, tobacco product, tobacco related device, or electronic delivery device licensed product to and~~ minor person under the age of 21.

Subd. 2. ~~Illegal possession. It shall be a violation of this Chapter for any minor to have in his or her possession any tobacco, tobacco product, tobacco related device, or electronic delivery device. This subdivision shall not apply to minors lawfully involved in a compliance check.~~

Subd. 3. ~~Illegal use. It shall be a violation of this Chapter for any minor to smoke, chew, sniff or otherwise use any tobacco, tobacco product, tobacco related device, or electronic delivery device.~~

Subd. 42. ~~Illegal procurement. It shall be a violation of this Chapter for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, tobacco related device, or electronic delivery device, and it shall be a violation of this Chapter for any person to purchase or otherwise obtain those items licensed products on behalf of a~~ minor person under the age of 21. It shall further be a violation for any person to coerce or attempt to coerce a minor person under the age of 21 to illegally purchase or otherwise obtain or use any ~~tobacco, tobacco product, tobacco related device, or electronic delivery device~~ licensed products. This subdivision shall not apply to ~~minors~~ persons under the age of 21 lawfully involved in a compliance check.

Subd. 53. ~~Use of false identification. It shall be a violation of this chapter for any~~ minor person 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.

512.11: **VIOLATIONS AND PENALTY:**

Subd. 1. Licensees: If a licensee or an employee of a licensee violates any provision of this Chapter, the licensee shall be charged an administrative penalty of one hundred fifty dollars (\$150.00). If a licensee or an employee of a licensee violates any provision of this Chapter a second time at the same location within twenty four (24) months of the initial violation, the licensee shall be charged an administrative penalty of four hundred dollars (\$400.00). If a licensee or an employee of a licensee violates any provision of this Chapter a third time at the same location within twenty four (24) months of the initial violation, the licensee shall

be charged an administrative penalty of five hundred dollars (\$500.00). No penalty under this Subdivision shall take effect until the licensee has received notice, served personally or by mail, of the alleged violation, and has had an opportunity for a hearing before the City Council. The notice shall provide information on how and where a hearing may be requested. The hearing must be requested by the licensee within ten (10) business days of notice delivery. A decision by the City Council that a violation of this Chapter has occurred shall be in writing. Judicial appeal shall be as provided for by state law.

Subd. 2. Individuals: Any person who sells tobacco to a person under the age of ~~eighteen (18)~~21 years shall be charged an administrative penalty of one hundred dollars (\$100.00) for a first offense and fifty dollars (\$50.00) additional for every subsequent offense. This penalty shall be in addition to the penalty charged under Section 512.11, Subd. 1. No penalty under this Subdivision, shall take effect until the person against whom the penalty will be charged has received notice, served personally or by mail, of the alleged violation, and has had an opportunity for a hearing before the City Council. The notice shall provide information on how and where a hearing may be requested. The hearing must be requested within ten (10) business days of notice delivery. A decision by the City Council that a violation of this Section has occurred shall be in writing. Judicial appeal shall be as provided for by state law.

Subd. 3. Continued violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

~~Subd. 4. Minors. Any person under the age of eighteen (18) years who purchases, possesses, or consumes tobacco or electronic delivery devices shall be treated as follows: for a first offense the violator will be referred to Northeast Youth and Family Services, and be required to complete NYFS's Tobacco Education Program, and pay the related fees or expenses. A second violation will result in an administrative penalty of fifty dollars (\$50.00), and will also result in a referral to Northeast Youth and Family Services for monitored community service. Third or subsequent violations will be referred to the Ramsey County Attorney's Office, Juvenile Court Division, for prosecution. Failure to comply with the requirements set forth above for a first or second offense will result in an immediate referral to the Ramsey County Attorney's Office for prosecution through the Juvenile Court Division.~~

Subd. 45. Other individuals. Other individuals, ~~other than minors~~ as regulated by Subd. 4 of this Section, found to be in violation of this Chapter, shall be charged an administrative fine of \$50.

Subd. 56. Defenses. It shall be an affirmative defense to a charge of ~~selling tobacco or tobacco related devices~~ licensed products to a person under the age of ~~eighteen (18)~~21 years in violation of this Section that the licensee or individual making the sale relied in good faith upon proof of age as described in Minnesota Statutes, Section 340A.503, subdivision 6.

512.12: **SUSPENSION OR REVOCATION:**

Subd. 1. In addition to any other penalty imposed under Section 512.11, any license issued under this Chapter may be suspended or revoked by the City Council for a violation of any provision of this Chapter if the licensee has been given a reasonable notice and an opportunity to be heard. A second violation within twelve (12) months of the initial violation shall result in a suspension of not less than three (3) consecutive days. A third violation within twenty four (24) months of the initial violation shall result in a suspension of ten (10) consecutive days. A fourth violation within twenty four (24) months of the initial violation shall result in revocation of license for ninety (90) consecutive days, and shall require a hearing before the City Council.

Subd. 2. Hearing and Notices. Suspension or revocation of a license shall be preceded by a hearing before the City Council. A hearing notice shall be delivered to the licensee at least ten (10) days prior to the hearing. The hearing notice shall state the time and place of the hearing and the nature of the charges against the licensee. Judicial appeal shall be as provided for by state law.

512.13: **EXCEPTIONS:** Nothing in this Chapter shall prevent the providing of ~~tobacco, tobacco products, tobacco-related devices, or electronic delivery devices~~ licensed products to a ~~minor person under the age of 21~~ as part of a lawfully recognized religious, spiritual, or cultural ceremony.

512.14: **SEVERABILITY:** If any section or provision of this ordinance is held invalid, such invalidity shall not affect other sections or provisions which can be given force and effect without the invalidated section or provision.

SECTION 2. This ordinance shall take effect and be in force 30 days from and after its passage and publication, in accordance with Section 3.09 of the City Charter.

Introduction and First Reading by the Mounds View City Council on August 26, 2019.

Second Reading and Adoption by the Mounds View City Council on September 9, 2019.

Publication Date: September 18, 2019.

Attest:

(SEAL)

Carol A. Mueller, Mayor

Nyle Zikmund
City Administrator