

ORDINANCE 2024-326

AN ORDINANCE AMENDING CITY CODE CHAPTER 112 (TOBACCO)

The City Council of the City of Lonsdale hereby ordains:

Chapter §112 of the City Code of the City of Lonsdale is hereby deleted and in lieu of, the following shall be inserted.

112.01 PURPOSE

This chapter is intended to regulate the sale, possession, and use of tobacco, tobacco related devices, or electronic delivery devices for the purpose of enforcing and furthering existing laws, to protect young people against the serious effects associated with the use of tobacco, tobacco related devices or electronic delivery devices, and to further the official public policy of the state in regard to preventing young people from starting smoking as stated in M.S. § 144.391.

§ 112.02 DEFINITIONS AND INTERPRETATIONS.

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

COMPLIANCE CHECKS. The system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products and tobacco related devices are following and complying with the requirements of this chapter. ***COMPLIANCE CHECKS*** shall involve the use of minors as authorized by this chapter. ***COMPLIANCE CHECKS*** shall also mean the use of minors who attempt to purchase tobacco, tobacco products or tobacco related devices for educational, research and training purposes as authorized by state and federal laws. ***COMPLIANCE CHECKS*** may also be conducted by other units of government for the purpose of enforcing appropriate federal, state or local laws and regulations relating to tobacco, tobacco products and 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 devices 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 product name or descriptor. Electronic delivery devices include 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.

MOVEABLE PLACE OF BUSINESS. Any form of business which is not a fixed address store front or other permanent type of structure authorized for sales transactions including but not limited to motorized vehicles, mobile sales kiosks or trailers.

RETAIL ESTABLISHMENT. Any place of business where tobacco, tobacco products, tobacco related devices or electronic delivery devices are available for sale to the general public. **RETAIL ESTABLISHMENTS** shall include, but not be limited to grocery stores, convenience stores and restaurants.

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

SELF-SERVICE MERCHANDISING. Open displays of tobacco, tobacco products or tobacco related 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 or tobacco related device between the customer and the licensee or employee. **SELF-SERVICE MERCHANDISING** shall not include vending machines.

TOBACCO or TOBACCO PRODUCTS. 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 including but not limited to 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 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. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately.

VENDING MACHINE. Any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products, tobacco related devices or electronic delivery 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.

§ 112.03 LICENSE REQUIRED; FEES.

No person shall keep for retail sale, sell or offer to sell at retail or otherwise dispense any tobacco, tobacco related device or electronic delivery device at any place in the city without first obtaining a license and paying a license fee.

(1) An application for a license to sell tobacco, tobacco products, tobacco related devices or electronic delivery devices shall be made on an application 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, a copy of the

educational materials the applicant intends to use to educate employees, and any additional information the city deems necessary. Upon receipt of a completed application, the City Clerk/Administrator shall forward the application to the Council for action at its next regularly scheduled council meeting. If the Clerk/Administrator shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

(2) The Council may either approve or deny the license, or it may delay action for the reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the Council shall approve the license, the Clerk/Administrator shall issue the license to the applicant. If the Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the Council's decision.

(3) All licenses issued under this chapter shall expire on December 31 of the year of issuance.

(4) Any license issued under this chapter may be revoked or suspended as provided herein. No transfer of any license to another location or person shall be valid without the prior approval of the Council.

(5) No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this chapter.

(6) All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

(7) The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but no more than 60 days before the expiration of the current license. The issuance of a license issued 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.

(8) No person shall be issued a license or renewal license to sell tobacco, tobacco related devices or electronic delivery devices 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 related devices or electronic delivery devices, including, but not limited to, reviewing the law on the sale of tobacco, tobacco related devices or electronic delivery devices, providing information on the health risks of using tobacco, and requiring employees to request identification from every customer. No license shall be issued or renewed unless the applicant or license holder has received training and instruction on the sale of tobacco, tobacco related devices or electronic delivery devices. The training shall include information that the sale of tobacco, tobacco related devices or electronic delivery devices to persons under the age of 21 is illegal, explain what proof of age is legally acceptable, and that a sale to person under the age of 21 can subject the applicant or license holder and their employees to both criminal and civil liability.

(9) No license shall be issued under this chapter until the appropriate license fee shall be paid in full. License fees shall be set by the City Council by resolution. License fees may not be prorated.

§ 112.04 BASIS FOR DENIAL OF LICENSE.

(A) The following shall be grounds for denying the issuance or renewal of a license under this chapter, provided that, except as may otherwise be required by law, the existence of any particular ground for denial does not mean that the city must deny the license.

(B) If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this section:

(1) The applicant is under the age of 21;

(2) The applicant has been convicted within the past five years of any violation of a federal, state or local law ordinance provision or other regulation relating to tobacco or tobacco products, tobacco related devices or electronic delivery devices;

(3) The applicant has had a license to sell tobacco, tobacco products, tobacco related devices or electronically delivery device revoked within the preceding 12 months of the date of application;

(4) The applicant fails to provide any information required on the application, or provides false or misleading information; and/or

(5) The applicant is prohibited by federal, state or other local law, ordinance or other regulation, from holding a license.

§ 112.05 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 devices:

(A) To any person under the age of 21;

(B) 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 premises in order to receive the tobacco, tobacco product, tobacco related device or electronic delivery devices and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco related device or electronically delivery device between the licensee or the licensee's employee and the customer;

(C) By means of any type of vending machine; or

(D) By any other means, or to any other person prohibited by federal, state, or other local law, ordinance provisions or other regulation.

§ 112.07 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 by any means where by the customer may have access to the 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 product, tobacco related device or electronic delivery devices between the licensee or his or her employee and the customer. All tobacco, tobacco products, tobacco related devices and electronic delivery devices shall be stored behind a counter, stored in an area with conspicuously displayed signage prohibiting person under the age of 21 and not freely accessible to customers without assistance from the licensee or his/her employees or in a case or other storage unit not left open and accessible to the general public.

§ 112.08 RESPONSIBILITY.

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

§ 112.09 COMPLIANCE CHECKS AND INSPECTIONS.

All licensed premises shall be open to inspection by the city police or other authorized city official during regular business hours. From time to time, but at least once per year, the city shall conduct compliance checks by engaging minors at least 17 years old but less than 21 years old (with the written consent of their parents or guardians), to enter the licensed premises to attempt to purchase tobacco, tobacco products or tobacco related devices. Minors used for the purpose of compliance checks shall be supervised by city designated law enforcement officers or other designated city personnel. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products or tobacco related devices when the items are obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minors age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this section shall prohibit compliance checks authorized by state or federal laws for educational, research or training purposes, or required for the enforcement of a particular state or federal law.

§ 112.09 OTHER ILLEGAL ACTS.

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

(A) 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 devices to any person under the age of 21.

(B) It shall be a violation of this chapter for any person under the age of 21 to have in his or her possession any tobacco, tobacco product, tobacco related device or electronic delivery

devices. This division shall not apply to persons under the age of 21 lawfully involved in a compliance check.

(C) It shall be a violation of this chapter for any person under the age of 21 to smoke, chew, sniff or otherwise use any tobacco, tobacco product, tobacco related device or electronic delivery devices.

(D) 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 tobacco, tobacco product, tobacco related device or electronic delivery devices and it shall be a violation of this chapter for any person to purchase or otherwise obtain the items on behalf of a person under the age of 21. It shall further be a violation for any person to coerce or attempt to coerce a person under the age of 21 to illegally purchase or otherwise obtain or use any tobacco, tobacco product, tobacco related device or electronic delivery devices. This division shall not apply to person under the age of 21 lawfully involved in a compliance check.

(E) It shall be a violation of this chapter for any person under the age of 21 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.

§ 112.10 VIOLATIONS/ADMINISTRATIVE PENALTIES

(A) If a licensee or employee of a licensee sells, gives, or otherwise furnishes tobacco, a tobacco related device, or an electronic delivery device to a person under the age of 21 years, or violates any other provision of this chapter, the licensee shall be charged an administrative penalty of \$300. An administrative penalty of \$600 shall be imposed for a second violation at the same location within 36 months after the initial violation. For a third or any subsequent violation at the same location within 36 months after the initial violation, an administrative penalty of \$1,000 shall be imposed and the licensee shall lose the licensee's authorization to sell tobacco, tobacco related devices or electronic delivery devices for a period of not less than 30 days nor more than one year. The loss of authorization shall be accomplished by a combination, if necessary, of a suspension of the licensee's then existing authorization and an order prohibiting renewal of the licensee's license for the prescribed period. No suspension or revocation may take effect until the licensee has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before the City Council. A decision that a violation has occurred must be in writing.

(B) An individual who sells, gives, or otherwise furnishes tobacco, a tobacco related device or an electronic delivery device to a person under the age of 21 years shall be charged an administrative penalty of \$50.

(C) Any person who purchases or attempts to purchase tobacco, tobacco related devices or electronic delivery devices and is under the age of 21 years may be charged an administrative penalty of up to \$50. The city may also send notice of the 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. The provisions of this division shall not

apply to a person under the age of 21 who purchases or attempts to purchase tobacco, tobacco related devices or electronic delivery devices while under the direct supervision of a responsible adult for training, research or enforcement purposes.

(D) Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this chapter. If the city elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.

§ 112.11 EXCEPTIONS AND DEFENSES.

Nothing in this chapter shall prevent the providing of tobacco, tobacco products, tobacco related devices or electronic delivery devices to a person under the age of 21 as part of a lawfully recognized religious, spiritual or cultural ceremony. It shall be an affirmative defense to the violation of this chapter for a person to have reasonably relied on proof of age as described by state law.

Adopted by the City Council of the City of Lonsdale this 28th day of March, 2024.



Tim Rud, Mayor

ATTEST:



Joel Erickson, City Administrator

(SEAL)