ORDINANCE NO. O2020-009

AN ORDINANCE OF THE CITY OF SHAKOPEE AMENDING TITLE XI, CHAPTER 110 AND TITLE XIII, CHAPTER 130 OF THE CITY CODE RELATED TO TOBACCO SALES AND USE

THE CITY COUNCIL OF THE CITY OF SHAKOPEE, MINNESOTA, ORDAINS:

Section 1. The Table of Contents for the Subchapter pertaining to ***TOBACCO, TOBACCO PRODUCTS, AND TOBACCO-RELATED DEVICES*** in Chapter 110 of the City Code is amended to read as follows:

110.055 Purpose
110.056 Definitions And Interpretations
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110.058 Basis For Denial Of License
110.059 Prohibited Sales
110.060 Vending Machines
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110.062 Responsibility
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110.065 Violations
110.066 Exceptions And Defenses
110.067 Amendment
110.068 Signage and Age Verification

Section 2. Section 110.055 of the City Code is amended to read as follows:

§ 110.055 PURPOSE.

A. *Policy.*

1. The city recognizes that many persons under the age of 21 years purchase or otherwise obtain, possess, and use electronic delivery devices,_tobacco, tobacco products, and tobacco-related devices, and such sales, possession, and use are violations of both state and federal laws.
2. Studies have shown that most smokers begin smoking before they have reached the age of 21 years and that those persons who reach the age of 21 years without having started smoking are significantly less likely to begin smoking.
3. Smoking has been shown to be the cause of several serious health problems that place a financial burden on all levels of government.

B. This subchapter is intended to regulate the sale, possession, and use of electronic delivery devices, tobacco, tobacco products, and tobacco-related devices for the purpose of enforcing and furthering existing laws; to protect persons under the age of 21 against the

serious effects associated with the use of electronic delivery devices,_tobacco, tobacco products, and tobacco-related devices; and to further the official public policy of the state in regard to preventing young people from starting to use electronic delivery devices, tobacco, tobacco products, and tobacco-related devices, as stated in M.S. § 144.391, as it may be amended from time to time.

Section 3. The following definitions in Section 110.056 of the City Code are amended to read as follows:

COMPLIANCE CHECKS. The system used by the city or any other jurisdiction to investigate and ensure that those licensed to sell electronic delivery devices,_tobacco, tobacco products, and tobacco-related devices are complying with the requirements of this subchapter or any state or federal law or regulation. COMPLIANCE CHECKS shall involve the use of persons under the age of 21 as authorized by this subchapter or state law. COMPLIANCE CHECKS shall also mean the use of persons under the age of 21 who attempt to purchase electronic delivery devices, tobacco, tobacco products, and tobacco-related devices for educational, research, and training purposes as authorized by state or federal law.

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; 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. The term TOBACCO or TOBACCO PRODUCTS excludes any 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.

Section 4. Section 110.056 of the City Code is amended by adding the following definition:

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 product 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.

Section 5. Section 110.057 of the City Code is amended to read as follows:

§ 110.057 LICENSE.

No person may sell or offer to sell any electronic delivery devices, tobacco, tobacco products, or tobacco-related devices without first having obtained a license to do so from the city in compliance with this subchapter.

A. *Application*. An application for a license to sell electronic delivery devices, tobacco, tobacco products, and tobacco-related 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 Clerk shall forward the application to the City Council. If the City Clerk determines that an application is incomplete, the City Clerk shall return the application to the applicant with notice of the information necessary to make the application complete.
B. *Action.* The City Council may either approve or deny the license, or it may defray action for such reasonable period of time as may be necessary to complete any investigation of the application or the applicant. If the City Council approves the license, the City Clerk 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 obtain judicial review of the City Council's decision.
C. *Term*. Each license will be issued for a period of one calendar year. If the application is made during the license year, a license may be issued for the remainder of the licensed year on a pro rata basis. Any unexpired fraction of a month shall be counted as a complete month. Every license expires on December 31 of the license year.
D. *Revocation or suspension*. Any license issued may be revoked or suspended as provided for in this subchapter.
E. *Transfers*. A license is 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.
F. *Moveable place of business*. No license may be issued to a moveable place of business. Only fixed location businesses are eligible to be licensed under this subchapter.
G. *Display.* All licenses must be posted and displayed in plain view of the general public on the licensed premises.
H. *Renewals*. The renewal of a license issued under this subchapter shall be handled in the same manner as the original application. The request for a renewal shall be made by the licensee 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 subchapter shall be considered a privilege and not an absolute right of the applicant and shall not entitle the licensee to an automatic renewal of the license.
I. *Fees.* No license shall be issued under this subchapter until the appropriate license fee has been paid in full.
J. *Instructional program*.

1. No person shall be issued a license or renewal license to sell electronic delivery devices, tobacco, tobacco products, and tobacco-related devices unless an applicant or license holder has an approved program for instructing all employees regarding the legal requirements pertaining to the sale of electronic delivery devices, tobacco, tobacco products, and tobacco-related devices at the business premises for which the license was issued. The instructional program shall include, but is not limited to, reviewing the law on the sale of electronic delivery devices, tobacco, tobacco products, and tobacco-related devices and the law regarding the requirement of purchasers to establish proof of age.
2. No license shall be issued unless the applicant or license holder signs a form attesting that each employee of the applicant or license holder has received training and instruction on the sale of electronic delivery devices, tobacco, tobacco products, and tobacco-related devices and the date such training occurred. The training shall include information that the sale of such products to persons under the age of 21 is illegal, explanation of what proof of age is legally acceptable, and that a sale to persons under the age of 21 can subject the applicant or license holder and their employees to criminal and civil liability.

K. *Sale by minors*. No minor may furnish, sell, or attempt to sell electronic delivery devices, tobacco, tobacco products, and tobacco-related devices unless written consent has been obtained from the minor's parents. Such written consent must include a statement of the potential penalties that can be imposed under this subchapter.

L. *Proof of age*. Any sale of electronic delivery devices, tobacco, tobacco products, and tobacco-related devices shall not take place unless the licensee requires any purchaser who appears to be under the age of 30 to establish proof of age by of the methods established by state law for the purchase of alcoholic beverages.

Section 6. Section 110.058, Paragraph B of the City Code is amended to read as follows:

B. The following shall be grounds for denying the issuance or renewal of a license under this subchapter:
   a. The applicant is under the age of 18 years;
   b. The applicant has been convicted within the past 5 years of any violation of a federal, state, or local law, or other regulation relating to electronic delivery devices, tobacco, tobacco products, and tobacco-related devices;
   c. The applicant has had a license to sell electronic delivery devices, tobacco, tobacco products, and tobacco-related devices revoked within the 12 months preceding 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 has outstanding fines, penalties, fees or taxes owed to the city, City Public Utilities Commission, county, or state; or
   f. The applicant is prohibited by federal, state, or local law or other regulation from holding a license.

Section 7. Section 110.059 of the City Code is amended to read as follows:

§ 110.059 PROHIBITED SALES.

It shall be a violation of this subchapter for any person to furnish, sell, or offer to sell electronic delivery devices, tobacco, tobacco products, and tobacco-related devices as follows:

A. To any person under the age of 21;
B. By means of a vending machine;
C. By means of self-service merchandising;
D. By means of loosies;
E. Containing opium, morphine, jimson weed, belladonna, 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; or
F. By any other means, to any other person, or in any other manner or form prohibited by federal, state, or local law, or other regulation.

Section 8. Section 110.060 of the City Code is amended to read as follows:

§ 110.060 VENDING MACHINES.

It shall be unlawful for a licensee to allow the sale of electronic delivery devices, tobacco, tobacco products, or tobacco-related devices by the means of a vending machine.

Section 9. Section 110.061 of the City Code is amended to read as follows:

§ 110.061 SELF-SERVICE MERCHANDISING.

It shall be unlawful for a licensee to allow the sale of electronic delivery devices, tobacco, tobacco products, and tobacco-related devices through self-service merchandising. All electronic delivery devices, tobacco, tobacco products, and tobacco-related devices shall either be stored behind a counter or other area not freely accessible to customers without the intervention of a store employee. This subchapter shall not apply to retail stores that derive at least 90% of their revenue from electronic delivery devices, tobacco, tobacco products, or tobacco-related devices, and where the retailer ensures that no person younger than 21 years of age is present, or permitted to enter, at any time.

Section 10. Section 110.062 of the City Code is amended to read as follows:

§ 110.062 RESPONSIBILITY.

All licensees shall be responsible for the actions of their employees in regard to the sale of electronic delivery devices, tobacco, tobacco products, or tobacco-related devices on the licensed premises. The sale of any such item by an employee shall be considered a sale by the license holder and shall subject the license holder to the penalties set forth in this subchapter. Nothing in this subchapter shall be construed as prohibiting the City Council from also subjecting the employee to appropriate penalties under this code, state, or federal law, or other applicable law or regulation.

Section 11. Section 110.063 of the City Code is amended to read as follows:

§ 110.063 COMPLIANCE CHECKS AND INSPECTIONS.

A. 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 persons at least 17 years of age but under 21 years of age to enter the licensed premises to attempt to purchase electronic delivery devices, tobacco, tobacco products, or tobacco-related devices. Minors used for the purpose of compliance checks must have the written consent of their parents or guardians and shall be supervised by city designated law enforcement officers or other designated city personnel. Persons used for compliance checks shall not be guilty of unlawful possession of electronic delivery devices, tobacco, tobacco products, or tobacco-related devices when such items are obtained as a part of the compliance check.

B. Compliance Check Procedure.

1. No person engaged in a compliance check shall use or attempt to use false identification to misrepresent the person's age.
2. Persons engaged in a compliance check shall answer truthfully all questions about the person's age asked by the licensee or the licensee's employee and shall produce any identification, if any exists, for which the person is asked.
3. Nothing in this subchapter 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.

Section 12. Section 110.064 of the City Code is amended to read as follows:

§ 110.064 OTHER ILLEGAL ACTS.

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

A. *Sales*. For any person to sell or attempt to sell or furnish any electronic delivery devices, tobacco, tobacco product, or tobacco-related device to any person under the age of 21;
B. *Possession*. For any person under the age of 21 to have in the person's possession any electronic delivery devices, tobacco, tobacco product, or tobacco-related device, excluding any minor lawfully involved in a compliance check;
C. *Use*. For any person under the age of 21 to smoke, chew, sniff, or otherwise use or ingest any electronic delivery devices, tobacco, tobacco product, or tobacco-related device;
D. *Procurement*. For any person under the age of 21 to purchase or attempt to purchase or otherwise obtain any electronic delivery devices, tobacco, tobacco product, or tobacco-related device; for any person to purchase or otherwise obtain any such item on behalf of a person under the age of 21; or for any person to coerce or attempt to coerce a person under the age of 21 to purchase or otherwise obtain or use any electronic delivery devices, tobacco, tobacco product, or tobacco-related device in a manner contrary to law, excluding any person under the age of 21 lawfully involved in a compliance check;

E. *Use of false identification*. For any person under the age of 21 to attempt to disguise the person's 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; and
F. *Sampling.* For any person to light or smoke tobacco or a tobacco product in a licensed establishment for any purpose, including, but not limited to, the purpose of allowing a customer or potential customer to sample tobacco or a tobacco product, except for the sampling of an electronic delivery.

Section 13. Section 110.065, Paragraph D of the City Code is amended to read as follows:

D. *Decision*. Following the hearing, if the City Council determines by a preponderance of the evidence that a violation of this subchapter occurred, that decision, along with the City Council's reasons for finding a violation and the administrative penalty to be imposed under § 110.999(C), shall be recorded in writing, a copy of which shall be provided to the violator. If the City Council finds that no violation occurred, such finding shall be recorded and a copy provided to the licensee.

Section 14. Section 110.066 of the City Code is amended to read as follows:

§ 110.066 EXCEPTIONS AND DEFENSES.

Nothing in this subchapter shall prevent the providing of electronic delivery devices, tobacco, tobacco products, or tobacco- related 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 a charge of violating this subchapter that the licensee or an employee of the licensee relied in good faith on proof of age in the manner required by state law for the purchase of alcoholic beverages.

Section 15. Chapter 110 of the City Code is amended by adding the following section:

§ 110.068 AGE VERIFICATION AND SIGNAGE.

A. *Signage*. At each location where electronic delivery devices, tobacco, tobacco products, and tobacco-related devices 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 these products. The sign shall provide notice that all persons responsible for selling these 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.
B. Age verification. At each location where electronic delivery devices, tobacco, tobacco products, and tobacco-related devices 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 section that the person appeared to be 30 years of age or older.

Section 16. Section 130.01 of the City Code is amended to read as follows:

§ 130.01 UNLAWFUL USE AND FURNISHING OF TOBACCO.

A. Unlawful Use. It is unlawful for any person, under the age of 21 years old, to use tobacco in any form.
B. Unlawful Furnishing to Persons under 21 Years of Age. It is unlawful for any person to furnish tobacco, by any manner or means and in any form, to any person under the age of 21 years old.

Section 17. Publication by Summary. The city council determines that publication of the title and summary of this ordinance would clearly inform the public of the intent and effect of the ordinance and therefore directs City staff to prepare a summary to be published in the official City newspaper in lieu of the complete ordinance.

Section 18. Effective Date. This ordinance shall be in force and effect upon adoption and publication in the official newspaper of the City in accordance with applicable law.

Adopted in regular session of the City Council of the City of Shakopee, Minnesota, held this ___ day of July, 2020.

_____
Mayor of the City of Shakopee

ATTEST:

_____
City Clerk