

ORDINANCE NO. 75

TOBACCO ORDINANCE

PREAMBLE

An ordinance relating to the sale, possession, and use of tobacco, tobacco products, and tobacco-related devices in the City of Brownton and to reduce the illegal sale, possession and use of such items to and by minors.

THE CITY COUNCIL OF THE CITY OF BROWNTON ORDAINS:

ARTICLE 1

PURPOSE

Because the City of Brownton recognizes that many person under the age of eighteen (18) years purchase or otherwise obtain, possess, and use tobacco, tobacco products and tobacco-related devices, and such sales, possession, and use are in violation of both State and Federal laws; and because studies have shown that most smokers begin smoking before they have reached the age of eighteen (18) year and that those persons who reach the age of eighteen (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, and tobacco-related devices for the purpose of enforcing and furthering existing laws, to protect minors against serious effects associated with the illegal use of tobacco, tobacco products and tobacco-related devices, and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke, as stated in Minnesota Statute 144.391.

ARTICLE 2

DEFINITIONS AND INTERPRETATIONS

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice versa. The term "shall" means mandatory and the term "may" means permissive. The following terms shall have the definitions given to them:

Section 2.01 TOBACCO OR TOBACCO PRODUCTS. "Tobacco" or "tobacco products" shall mean any substance or item containing tobacco leaf, including but not limited to cigarettes; cigars; pipe tobacco; snuff; fine-cut or other chewing tobacco; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff flowers; cavendish; shorts; plug and twist tobaccos; dipping tobaccos; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing or smoking.

(NOTE: This definition expands on the statutory definition to be more inclusive. See Minnesota Statute 609.685.)

Section 2.02 TOBACCO-RELATED DEVICES. "Tobacco-related devices" shall mean any tobacco product as well as a pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, or smoking of tobacco or tobacco products.

Section 2.03 SELF-SERVICE MERCHANDISING. "Self-service merchandising" shall mean open displays of tobacco, tobacco products, or tobacco-related devices in any manner where any person may have access to the tobacco, tobacco products, or tobacco-related devices, with 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.

Section 2.04 VENDING MACHINE. "Vending machine" shall mean 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 forms of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product, or tobacco-related device.

Section 2.05 INDIVIDUALLY PACKAGED. "Individually packaged" shall mean 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 subdivision, shall not be considered individually packaged.

Section 2.06 LOOSIES. "Loosies" shall mean the common term used to refer to a single or individually packaged cigarette.

Section 2.07 MINOR. "Minor" shall mean any person who has not yet reached the age of eighteen (18) years.

Section 2.08 RETAIL ESTABLISHMENT. "Retail establishment" shall mean any place of business where tobacco, tobacco products or tobacco-related devices are available for sale to the general public. Retail establishment shall include, but not limited to, grocery stores, convenience stores, restaurants, bars and liquor outlets.

Section 2.09 MOVEABLE PLACE OF BUSINESS. "Moveable place of business" shall refer to 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.

Section 2.10 SALE. A "sale" shall mean any transfer of goods for money, trade, barter or other consideration.

Section 2.11 COMPLIANCE CHECKS. "Compliance checks" shall mean the system the City of Brownton 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 ordinance. 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.

ARTICLE 3 LICENSE

No person shall sell or offer to sell any tobacco, tobacco products, or tobacco-related devices without first having obtained a license to do so from the City of Brownton.

Section 3.01 APPLICATION. An application for a license to sell tobacco, tobacco products, or tobacco related devices shall be made on a form provided by the City of Brownton. 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 determine whether the applicant is eligible for a license and forward the application to the City Council for action at its next regularly scheduled board meeting. If the City Clerk determines that an application is incomplete, the application will be returned to the applicant with notice of the information necessary to make the application complete.

Section 3.02 ACTION. The City of Brownton City Council may either approve or deny the license, or it may delay action for such 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 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 appeal the decision.

Section 3.03 TERM. The term of all licenses issued hereunder shall be from January 1 to the following December 31 or any part thereof.

Section 3.04 REVOCATION OR SUSPENSION. Any license issued under this ordinance may be revoked or suspended, as provided in the Violations and Penalties section of this ordinance.

Section 3.05 TRANSFERS. All license issued under the ordinance 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.

Section 3.06 MOVEABLE PLACE OF BUSINESS. No license shall be issued to a moveable place of business. Only fixed location business shall be eligible to be licensed under this ordinance.

Section 3.07 DISPLAY. All licenses shall be posted and displayed in plain view of the general public on the licensed premises.

Section 3.08 RENEWALS. 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 thirty (30) days, but no more than sixty (60) days, before the expiration of the current license. The issuance of a license under this ordinance 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.

ARTICLE 4

FEES

No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The fee for a license under this ordinance shall not exceed the cost of enforcement of this ordinance. The City Council shall annually set the license fee by resolution. License fees shall not be prorated for a partial year after 1998.

ARTICLE 5

BASIS FOR DENIAL OF LICENSE

The following shall be grounds for denying the issuance or renewal of a license under this ordinance; however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the City of Brownton must deny the license. 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:

- A. The applicant is under the age of eighteen (18) years.
- B. The applicant has been convicted within the past five (5) years of any violation of a Federal, State or local law, ordinance provision or other regulation relating to tobacco, tobacco products or tobacco-related devices.
- C. The applicant has had a license to sell tobacco, tobacco products, or tobacco-related devices revoked within the preceding twelve (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 local law, ordinance, or other regulation, from holding such a license.

**ARTICLE 6
PROHIBITED SALES**

It shall be a violation of this ordinance for any person to sell or offer to sell any tobacco, tobacco products, or tobacco-related devices:

- A. Without first obtaining a license from City of Brownton.
- B. To any person under the age of eighteen (18) years.
- C. By means of any type of vending machine, except as may otherwise be provided in this ordinance.
- D. 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, or tobacco-related device and whereby there is not a physical exchange of the tobacco, tobacco product or tobacco-related device between the license or the licensee's employee, and the customer.
- E. By means of loosies, as defined in Article 2 of this ordinance.
- F. Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic tobacco or added as part of an otherwise lawful manufacturing process.
- G. By any other means, to any other person, or in any other manner or form prohibited by Federal, State or other local law, ordinance provision or other regulation.

**ARTICLE 7
VENDING MACHINES**

It shall be unlawful for a person licensed under this ordinance to allow the sale of tobacco, tobacco products or tobacco-related devices by the means of a vending machine, unless minors are at all times prohibited from entering the licensed establishments.

**ARTICLE 8
SELF-SERVICE SALES**

It shall be unlawful for a licensee under this ordinance to allow the sale of tobacco, tobacco products or tobacco-related devices by any means whereby the customer may have access to such 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 or tobacco-related device between the licensee or his or her clerk and the customer. All tobacco, tobacco products and tobacco-related devices shall either be stored behind a counter or other area not freely accessible to customers. Any retailer selling tobacco, tobacco products or tobacco-related devices at the time this ordinance is adopted, shall comply with this Article within sixty (60) days.

**ARTICLE 9
RESPONSIBILITY**

All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products or tobacco-related devices on the licensed premises, and the sale of such 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 of Brownton from also subjecting the clerk to whatever penalties are appropriate under this ordinance, state or federal law, or other applicable law or regulation.

ARTICLE 10
COMPLIANCE CHECKS AND INSPECTIONS

Section 10.01 All licensed premises shall be open to inspection by the local law enforcement agencies or other authorized City of Brownston officials during business hours. From time to time, but at least once per year, the City of Brownston shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age of fifteen (15) years, but less than eighteen (18) years, to enter the licensed premises to attempt to purchase tobacco, tobacco products, or tobacco-related devices. Minors used for the purposes of compliance checks shall not be guilty of the unlawful purchase or attempted purchase, nor the unlawful possession of tobacco, tobacco products or tobacco-related devices when such items are obtained or attempted purchase, nor the unlawful possession of tobacco, tobacco products or tobacco-related devices when such items are obtained or attempted to be 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 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 Article 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 10.02 Conducting compliance checks shall be the responsibility of the Brownston Police Department and Public Health Department, acting in concert. For all compliance checks, the supervising adult shall be a licensed peace officer. All minor participants shall receive training prior to engaging in compliance check activities. Transportation shall be provided by the supervising adult, or other adult employee of the City of Brownston, as designated by the Brownston Police Department. Participating minors shall be considered "volunteers" subject to receipt of a per diem payment in an amount established for other county boards and commissions.

ARTICLE 11
OTHER ILLEGAL ACTS

Unless otherwise provided, the following acts shall be a violation of this ordinance.

Section 11.01 ILLEGAL SALES. It shall be a violation of this ordinance for any person to sell, give, or otherwise provide any tobacco, tobacco product, or tobacco-related device to any minor.

Section 11.02 ILLEGAL POSSESSION. It shall be a violation of this ordinance for any minor to have in his or her possession any tobacco, tobacco product, or tobacco-related device. This section shall not apply to minors lawfully involved in a compliance check.

Section 11.03 ILLEGAL USE. It shall be a violation of this ordinance for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, or tobacco-related device.

Section 11.04 ILLEGAL PROCUREMENT. It shall be violation of this ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, or tobacco-related device, and it shall be a violation of this ordinance for any person to purchase or otherwise obtain such items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product, or tobacco-related device. This section shall not apply to minors lawfully involved in a compliance check.

Section 11.05 USE OF FALSE IDENTIFICATION. It shall be a violation of this ordinance for any minor 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 had been modified or tampered with to represent an age older than the actual age of the person.

**ARTICLE 12
VIOLATIONS**

Section 12.01 NOTICE. Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his or her right to be heard on the accusation.

Section 12.02 HEARINGS. If a person accused of violating this ordinance so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

Section 12.03 HEARING OFFICER/PANEL. The City Council shall appoint the Hearing Officer.

Section 12.04 DECISION. If the Hearing Officer determines that a violation of this ordinance did occur, that decision, along with the Hearing Officer's reasons for finding a violation and the penalty to be imposed under Article 13 of this ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the Hearing Officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.

Section 12.05 APPEALS. Appeals of any decision made by the Hearing Officer shall be filed in the District Court for the jurisdiction of McLeod County in which the alleged violation occurred.

Section 12.06 CONTINUED VIOLATION. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

**ARTICLE 13
PENALTIES**

Section 13.01 NON-LICENSED PERSONS/RETAIL ESTABLISHMENTS. Non-licensed person/retail establishments found to have sold any tobacco, tobacco product or tobacco-related device to a person without obtaining a license shall be charged an administrative fee of One Hundred Fifty and no/100 Dollars (\$150.00).

Section 13.02 LICENSEES. Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative fine as follows:

- A. Seventy-five and no/100 Dollars (\$75.00) for a first violation of this ordinance;
- B. Two Hundred and no/100 Dollars (\$200.00) for a second offense at the same licensed premises within a twenty-four (24)-month period;
- C. Two Hundred Fifty and no/100 Dollars (\$250.00) for a third or subsequent offense at the same location within a twenty-four (24)-month period. In addition, after the third offense, the license shall be suspended for not less than seven (7) days.

Section 13.03 OTHER INDIVIDUALS. Other individuals, other than minors regulated by Section 13.04 of this Article, found to be in violation of this ordinance shall be charged an administrative fee of Fifty and no/100 Dollars (\$50.00)

Section 13.04 MINORS. Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase, tobacco, tobacco products or tobacco-related devices, shall be:

- A. First time offense. Be referred to a diversion program operated by the McLeod County Court Services Department.
- B. Second time offense. Be petitioned or ticketed into juvenile court as a petty offender, and receive any disposition authorized by law for petty offenders.

Section 13.05 MISDEMEANOR. Nothing in this Article shall prohibit the City of Brownton from seeking prosecution as a misdemeanor for any violation of this ordinance.

ARTICLE 14
EXCEPTION SAND DEFENSES

Nothing in this ordinance shall prevent the providing of tobacco, tobacco products or tobacco-related devices to a minor as part of a lawfully recognized religious, spiritual or cultural ceremony. It shall be an affirmative defense to the violation of this ordinance for a person to have reasonable relied upon proof of age, as described by State law.

ARTICLE 15
SEVERABILITY AND SAVINGS CLAUSE

If any section or portion of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a Court of competent jurisdiction, that finding shall not serve as an invalidation or effect the validity and enforceability of any other article or provision of this ordinance.

ARTICLE 16
EFFECTIVE DATE

This ordinance shall take effect and be in force from and after its publication in the official newspaper of the City of Brownton.

Adopted and approved by the City Council this 2nd day of June, 1998

Charles Warner, Mayor
Attest: Cynthia Lindeman, City Clerk