



Legislation Details (With Text)

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Final action:

Title: Amending Chapter 324 of the Legislative Code to remove tobacco vending machine licenses, reduce the number of Tobacco Shop Licenses from 150 to 100 and reduce the number of Tobacco Product Shop Licenses from 25 to 15.

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Indexes:

Code sections:

Attachments: 1. Tobacco-Free Alliance public comment

Date	Ver.	Action By	Action	Result
11/15/2023	1	City Council	Laid Over to Second Reading	

Amending Chapter 324 of the Legislative Code to remove tobacco vending machine licenses, reduce the number of Tobacco Shop Licenses from 150 to 100, reduce the number of Tobacco Product Shop Licenses from 25 to 15, and move the penalty section into the matrix penalties under section 310.

SECTION 1

WHEREAS, the City of Saint Paul has a history of passing bold tobacco prevention policies including passing smoke-free bars and restaurants, banning candy cigarettes, setting a minimum price for cigars, placing a cap on the number of tobacco outlets, implementing a distance requirement between tobacco shops, and restricting all flavored tobacco products to adult-only tobacco shops and liquor stores; and

WHEREAS, vending machine licenses promote the use of tobacco; and

WHEREAS, taking away the access to tobacco helps prevent addiction; and

WHEREAS, the City of Saint Paul has been reducing the number of Tobacco Shop Licenses and Tobacco Product Shop Licenses and continuing to reduce these licenses will help prevent future generations from the harms of tobacco; and

RESOLVED, the Council of the City of Saint Paul does hereby ordain:

SECTION 2

Chapter 324.01 of the Saint Paul Legislative Code is hereby amended as follows:

Sec. 324.01. License required.

- (a) No person shall ~~may~~ sell or offer for sale at retail within the city any licensed product or in any manner represent or hold himself or herself ~~themselves~~ out as one who sells or offers for sale at retail any licensed product or maintain a tobacco vending machine for the sale of licensed products without a license from the city.
- (b) A tobacco vending machine may be located in a public accommodation, provided that:
 - (1) All tobacco vending machines shall be operable only by the activation of an electronic switch operated by an employee of the establishment before each sale, or by insertion of a token provided to the purchaser by an employee of the licensee;
 - (2) Any machine shall be located in the immediate vicinity, plain view and control of a responsible employee so that all purchases will be readily observable by that employee. The tobacco vending machine shall not be located in a coatroom, restroom, unmonitored hallway, outer waiting area or similar unmonitored areas. The tobacco vending machine shall be inaccessible to the public when the establishment is closed;
 - (3) Any tobacco vending machine shall have posted on or near it a sign with the statement, in letters at least one-half (1/2) inch high, "The sale of tobacco products or electronic delivery devices to persons under twenty-one is prohibited."
- (e)(b) Any license issued pursuant to this chapter shall ~~shall~~ must be issued to the person, firm or corporation that operates the principal business at that address. ~~Each vending machine shall be required to have a separate license.~~
- (d)(c) No license may be issued pursuant to this chapter for a location or place of sale if a tobacco license previously issued for that location or place of sale has been revoked for any reason other than nonpayment of license fees within the past five (5) years.

SECTION 3

Chapter 324.02 of the Saint Paul Legislative Code is hereby amended as follows:

Sec. 324.02. License for each location ~~or vending machine.~~

A license shall ~~permit~~ permits the licensee to sell licensed products at retail at the one (1) location specified in said license, and a separate license shall be is required for each location ~~or tobacco vending machine.~~

SECTION 4

Chapter 324.03 of the Saint Paul Legislative Code is hereby amended as follows:

Sec. 324.03. Definitions.

The following words and phrases, as used in this chapter, will, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except in those cases where the context clearly indicates a different meaning:

- (1) *Cigar* means any roll of tobacco that is wrapped in tobacco leaf, or in any other substance containing tobacco, with or without a tip or mouthpiece, that is not a cigarette as defined in Minn. Stats. § 297F.01, subd. 3, as may be amended from time to time.
- (2) *Cigarette* means and includes any roll for smoking, made wholly or in part of tobacco, irrespective of size and shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except whole tobacco leaf, and includes any cigarette as defined in Minn. Stats. § 297F.01, subd. 3.
- (3) *Drug paraphernalia* means drug paraphernalia as defined in Saint Paul Legislative Code Section 255.01.
- (4) *Electronic delivery device* means 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 includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any product that has been approved or certified 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 marketed and sold for such an approved purpose.
- (5) *Flavored product* means any tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product that contains a taste or smell, other than the taste or smell of tobacco that is distinguishable by an ordinary consumer either prior to or during the consumption of the tobacco product, electronic delivery device, or nicotine or lobelia delivery product, including, but not limited to, any taste or smell relating to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, fruit or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such product or device, that the product or device has or produces a taste or smell other than tobacco will constitute presumptive evidence that the product or device is a flavored product.
- (6) *Licensed products* means collectively any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.
- (7) *Nicotine or lobelia delivery product* means any product containing or delivering nicotine or lobelia, whether natural or synthetic, intended for human consumption, or any part of such a product, that is not a tobacco product or an electronic delivery device, as defined in this section. Nicotine or lobelia delivery product does not include any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.
- (8) *Non-discounted price* means the higher of the price listed for licensed products on a package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the sale price.
- (9) *Price reduction instrument* means any coupon, voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or any other form, not included in the non-discounted price, used for commercial purposes to receive an article, product, service, or accommodation without charge or at a discounted price.

- (10) *Sale* means and includes any transfer, conditional or otherwise, of title or possession.
- (11) *Sale at retail* means and includes all sales except those where the merchandise is sold for the purpose of resale by a person principally engaged in selling merchandise for resale.
- (12) *Snuff* means any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.
- (13) *Snus* means any smokeless tobacco product marketed and sold as snus, and sold in ready-to-use pouches or loose as a moist powder.
- (14) *Tobacco or tobacco product* means 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, cigarettes, cigars, little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snus, snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco. Tobacco products 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.
- (15) *Tobacco license* means either a tobacco shop or a tobacco products shop license.
- (16) *Tobacco shop license* means a license issued to a person, firm, or corporation for an establishment that:
- a. May offer for sale licensed products which are accessible to the public only with the intervention of a store employee; and,
 - b. May allow persons who are under the age of twenty-one (21) to enter the establishment; and
- (17) *Tobacco products shop license* means a license issued to a person, firm, or corporation for an establishment that:
- a. Must derive at least ninety (90) percent of its revenue from the sale of licensed products;
 - b. Must prohibit persons who are under the age of twenty-one (21) from entering the establishment;
 - c. Must be accessible only through a door opening directly to the outside; and
 - d. Must be staffed by at least one individual solely dedicated to the tobacco products shop during all operating hours.
- (18) *Tobacco-related devices* means cigarette papers, 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 vapors of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately.
- (19) ~~*Tobacco vending machine* means a machine for vending licensed products by the insertion of money, tokens, or other form of payment.~~

SECTION 5

Chapter 324.04 of the Saint Paul Legislative Code is hereby amended as follows:

Sec. 324.04. Fee, duration, limitation on number of licenses.

- (a) *License fee, duration.* The annual license fee for each license issued under this chapter will be established by ordinance as specified in section 310.09(b) of the Legislative Code. Each license will expire one (1) year from the date of issuance during each calendar year. The annual license fee will be prorated for licenses in force less than a full year.
- (b) *Limitation on number of licenses and location.*
- (1) The total number of tobacco shop licenses issued under this chapter will not exceed ~~one hundred fifty (150)~~ one hundred (100). The total number of tobacco products shop licenses issued under this chapter will not exceed ~~twenty-five (25)~~ fifteen (15). Establishments or locations holding either tobacco shop or tobacco product shop licenses on July 31, 2021, or with an application of a license pending on July 31, 2021, that is ultimately granted will not be affected by this limitation but will be entitled to have such licenses renewed or new license granted, subject to the following conditions:
- a. The establishment or location is in compliance with all other requirements of law and there exist no grounds for adverse actions against such licenses;
- b. The previous license has not terminated or expired more than one (1) year before the new license had been first applied for;
- c. A previous license has not been revoked by the council.
- (2) No tobacco license may be issued to a person, firm, or corporation for any establishment located within one-half mile (2,640 feet) of another establishment possessing a tobacco license. Said one-half mile being calculated and computed as the distance measured from the property line of the premises or building proposed as the location for the tobacco license to the property line of any other tobacco license.

SECTION 6

Chapter 324.05 of the Saint Paul Legislative Code is hereby amended as follows:

Sec. 324.05. Application.

In addition to any other information required by the director, the applicant must state the true name of the applicant, the name under which ~~he or she~~ they will conduct ~~his or her~~ their business, whether such business is that of an individual, sole trader, firm, partnership, or corporation, and the address where such business is to be conducted. Any person applying for more than one (1) license must file with the department of safety and inspections a list of all locations for which license applications are being filed. Any change in the location of the place of sale will require a new license application.

SECTION 7

Chapter 324.06 of the Saint Paul Legislative Code is hereby amended as follows:

Sec. 324.06. License to be displayed.

The license shall ~~must~~ be displayed by the licensee in a prominent and conspicuous place at the licensed location. ~~In the case of a tobacco vending machine, the operator shall also affix his or her name, address and telephone number in a conspicuous place on each machine.~~

SECTION 8

Chapter 324.07 of the Saint Paul Legislative Code is hereby amended as follows:

Sec. 324.07. Sales prohibited.

- (a) No person may sell a cigarette outside its original packaging containing health warnings satisfying the requirements of federal law. No cigarettes may be sold individually or in packages of fewer than twenty (20) cigarettes.
- (b) No person may sell or dispense licensed products from a motor vehicle or other movable place of business.
- (c) No person may sell licensed products from vending machines, unless the vending machines are in a facility that cannot be entered at any time by persons younger than twenty-one (21) years of age.
- (d) No person may offer for sale licensed products in any open displays which are accessible to the public without the intervention of a store employee. This restriction does not apply to establishments holding a tobacco products shop license.
- (e) No person may sell, offer for sale, or otherwise distribute cigars in original packages containing three (3) or fewer cigars for a sale price, after any coupons, multipack or buy-one/get-one promotions, or any other discounts are applied and prior to applicable sales taxes being imposed, of less than two dollars and sixty cents (\$2.60) per cigar contained within. In addition, no person may sell, offer for sale, or otherwise distribute cigars in original packages of four (4) or more cigars for a sale price, after any coupons, multipack or buy-one/get-one promotions, or any other discounts are applied and prior to applicable sales taxes being imposed, of less than ten dollars and forty cents (\$10.40) per package.
- (f) No person may sell or offer for retail sale cigarette packages or cartons for a sales price, prior to applicable sales taxes being imposed, of less than ten dollars (\$10.00) per pack.
- (g) No person may sell or offer for retail sale moist snuff retail packages or multipacks for a sales price, prior to applicable sales taxes being imposed, of less than ten dollars (\$10.00) per 1.2 ounce package. No person may sell or offer for retail sale any smokeless tobacco/moist snuff unless it is sold in a package of at least 1.2 ounces minimum package size. The price floor for packages larger than 1.2 ounces shall be computed by adding two dollars and fifty cents (\$2.50) for each 0.3 ounces or any fraction thereof in excess of 1.2 ounces, excluding all applicable taxes.
- (h) No person may sell or offer for sale or otherwise distribute snus for a sales price, prior to applicable sales taxes being imposed, of less than ten dollars (\$10.00) per 0.32 ounce package. No person may sell or offer for retail sale any snus unless it is sold in a package of at least 0.32 ounces minimum pack size. The price floor for packages larger than 0.32 ounces shall be computed by adding two dollars and fifty cents (\$2.50) for each 0.08 ounces or any fraction thereof in excess of 0.32 ounces, excluding all applicable taxes.
- (i) No holder of a license issued under this chapter, nor any employee or agent of same may sell tobacco products to a person under the age of twenty-one (21) years. Sale to persons under the age of twenty-one (21) years prohibited.
 - (1) It is an affirmative defense to a charge under this subdivision if the defendant proves by a preponderance of the evidence that the defendant reasonably and in good faith relied on proof of age as described in Minn. Stats. § 340A.503, subd. 6.
- (j) No person may sell, offer for sale, or otherwise distribute any flavored products, unless excepted under section 324.07(l) of this chapter.
- (k) *Coupons and price promotions.* No holder of a license issued under this chapter, nor any employee

or agent of same, may:

- (1) Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any price reduction instrument or other offer that provides any licensed product without charge or for less than the listed or non-discounted price; or
- (2) Sell or offer to sell licensed products, to consumers through any multi-pack discounts (e.g., "buy-two-get-one-free") or otherwise provide or distribute to consumers any licensed products, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other licensed products.

Nothing in this chapter is intended to prohibit communication of pricing information or other truthful, non-misleading information to consumers.

(l) *Exceptions.*

- (1) Notwithstanding section (i), individuals exempted under Minn. Stats. § 609.685 are also exempt from this section.
 - (2) The penalties in this section do not apply to a person under the age of twenty-one (21) years who purchases or attempts to purchase licensed products while under the direct supervision of a responsible adult for training, education, research, or enforcement purposes.
 - (3) Retail stores holding a tobacco products shop license are permitted to sell and offer for sale flavored tobacco products.
- (m) Any violation of this chapter will subject the licensee to provisions of chapter 310 and section 324.10 of the Saint Paul Legislative Code.

SECTION 9

Chapter 324.08 of the Saint Paul Legislative Code is hereby amended as follows:

Sec. 324.08. Distribution of free products prohibited.

No person shall may distribute any tobacco products free to any person on the sidewalks, pedestrian concourses, pedestrian malls or pedestrian skyway systems within the city.

SECTION 10

Chapter 324.09 of the Saint Paul Legislative Code is hereby deleted:

~~Sec. 324.09. Reserved.~~

Section 324.10 is hereby deleted as it has been moved to the Matrix Penalty Section under Saint Paul Legislative Code Section 310.

SECTION 11

Chapter 324.10 of the Saint Paul Legislative Code is hereby deleted and moved into the Matrix Penalty Section under Saint Paul Legislative Code Section 310:

~~Sec. 324.10. Presumptive penalties.~~

- (a) *Purpose.* ~~The purpose of this section is to establish a standard by which the city council determines~~

the amount of fines, length of license suspensions and the propriety of revocations for licensees. These penalties are presumed to be appropriate for every case; however, the council may deviate therefrom in an individual case where the council finds and determines that there exist substantial and compelling reasons which make it appropriate to do so, except, the council may not deviate below statewide minimum penalties for licensees. When deviating from these standards, the council shall provide written reasons that specify why the penalty selected was more appropriate. Where no penalty is listed below, the presumptive penalty under Saint Paul Legislative Code Section 310.

- (b) *Presumptive penalties for licensees for violations.* Adverse penalties for licensees for violations or convictions shall be presumed as follows:

Type of Violation	Appearance			
	1st	2nd	3rd	4th
(1) Sale to a person under twenty one (21) years of age	\$500.00 fine	\$1,000.00 fine	\$2,000.00 fine and 7-day suspension	Revocation
(2) Display, possession or multiple incidents of sales of: • single cigarettes; • menthol tobacco products; or • flavored tobacco products	10-day suspension	Revocation		

- (c) *Fines payable without hearing.* Notwithstanding the provisions of section 310.05(l), a licensee who would be making a first or second appearance before the council may elect to pay the fine to the department of safety and inspections without a council hearing, unless the notice of violation has indicated that a hearing is required because of circumstances which may warrant deviation from the presumptive fine amount. Payment of the recommended fine will be considered to be a waiver of the hearing to which the licensee is entitled, and will be considered an "appearance" for the purpose of determining presumptive penalties for subsequent violations.

- (d) *Computation of time.* Except as otherwise provided by Minn. Stats. § 461.12, subd. 2, subsequent violations are subject to the following:

- (1) *Second, third and fourth appearances.* A second violation within twenty four (24) months shall be treated as a second appearance, a third within twenty four (24) months treated as a third appearance, and a fourth within twenty four (24) months treated as a fourth appearance for the purpose of determining the presumptive penalty.
- (2) *Any appearance not covered by subsections (1) above shall be treated as a first appearance.* Measurement of the twenty four (24) month period shall be as follows: The beginning date shall be the earliest violation's date of appearance before the council, and the ending date shall be the date of the new violation. In case of multiple new violations, the ending date to be used shall be the date of the violation last in time.

SECTION 12

This Ordinance shall take effect and be in force thirty (30) days following passage, approval, and publication.