

ORDINANCE NO. 28 4TH SERIES

AN ORDINANCE OF THE CITY OF EAST GRAND FORKS, MINNESOTA, AMENDING CITY CODE CHAPTER 116 ENTITLED "TOBACCO PRODUCTS" TO COMPLY WITH NEW FEDERAL AGE REQUIREMENTS AND TO INCLUDE ADMINISTRATIVE PENALTY PROVISIONS FOR FAILING COMPLIANCE CHECKS; AND BY ADOPTING BY REFERENCE CITY CODE CHAPTER 1 AND SECTION 10.99 WHICH, AMONG OTHER THINGS, CONTAIN PENALTY PROVISIONS.

THE CITY OF EAST GRAND FORKS ORDAINS:

Section 1. That Chapter 116 of the City Code is hereby amended to read as follows, to-wit:

CHAPTER 116: TOBACCO PRODUCTS

Section

- 116.01 Purpose
- 116.02 Definitions
- 116.03 License
- 116.04 Fees
- 116.05 Basis for denial of license
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116.01 PURPOSE.

Because the city recognizes that many persons under the age of 21 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, tobacco related devices, electronic delivery devices, and nicotine solutions products, and such sales, possession, and use are violations of both state and federal laws; and because studies, which are accepted and adopted, have shown that most smokers or users of nicotine products begin using before they have reached the age of 21 years and that those persons who reach the age of 21 years without having started are significantly less likely to begin using nicotine; and because smoking and use of nicotine solution products have been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this chapter shall be intended to regulate the sale, possession, and use of tobacco, tobacco products, tobacco related devices, electronic delivery devices, and nicotine solutions products 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 and tobacco related devices, and to further the official public policy of the state in regard to preventing young people from starting to smoke or the use of nicotine solution products as stated in M.S. 144.391, M.S. 609.685 and 297F.01 as it may be amended from time to time.

116.02 DEFINITIONS.

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. Means any product containing or delivering nicotine, lobelia, or any other substance 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.

INDIVIDUALLY PACKAGED. The practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but are not 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 section shall not be considered individually packaged.

LOOSIES. The common term used to refer to a single or individually packaged cigarette.

MINOR. Any natural person who has not yet reached the age of 21 years.

MOVABLE 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.

NICOTINE SOLUTION PRODUCTS. Means “any cartridge, bottle or other package that contains nicotine, including nicotine made or derived from tobacco, or sources other than tobacco, that is in a solution that is consumed, or meant to be consumed, through the use of a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means that produces vapor or aerosol...[including] any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device, and any batteries, heating elements, or other components, parts, or accessories sold with and meant to be used in the consumption of a solution containing nicotine.”

RETAIL ESTABLISHMENT. Any place of business where tobacco, tobacco products, tobacco related devices, electronic delivery devices and nicotine solution products 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, tobacco related devices, electronic delivery devices and nicotine solution products in any manner where any person shall have access to the tobacco, tobacco products, tobacco related devices, electronic delivery devices or nicotine solution products 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, electronic delivery devices or nicotine solution products between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

TOBACCO or TOBACCO PRODUCTS. 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 flower; 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 a manner as to be suitable for chewing, sniffing, or smoking of tobacco or tobacco products.

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, or smoking of tobacco, tobacco products. Tobacco related devices include components of tobacco-related devices which may be marked or sold separately. or nicotine solution products.

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, tobacco related device, electronic delivery devices or nicotine solution products.

116.03 LICENSE.

It is unlawful for any person to sell or offer to sell any tobacco, tobacco products, or tobacco related device without first having obtained a license to do so from the city.

(A) *Application.* An application for a license to sell tobacco, tobacco products, tobacco related devices, electronic delivery devices or nicotine solution products 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 Council for action at its next regularly scheduled 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.

(B) *Action.* The 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 Council shall approve the license, the City 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.

(C) *Term.* The term of all license issued under this chapter shall be from January 1 through December 31 of the year of issuance.

(D) *Revocation or suspension.* Any license issued under this chapter may be revoked or suspended as provided in the section 116.99.

(E) *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 Council.

(F) *Movable place of business.* No license shall be issued to a movable place of business. Only fixed locations businesses shall be eligible to be licensed under this chapter.

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

(H) *Renewals.* The renewal of a license issued under this chapter shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but not more than 60 days before the expiration of the current license.

116.04 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 set and may from time to time be amended by the Council by resolution.

116.05 BASIS FOR DENIAL OF LICENSE.

The following shall be grounds for denying the issuance or renewal of a license under this chapter; 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. 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.

(A) The applicant is under the age of 21 years.

(B) The applicant has been convicted within the past 5 years of any violation of a federal, state or local law or City Code provision, or other regulation relating to tobacco or tobacco products or tobacco related devices or electronic delivery devices or nicotine solution products.

(C) The applicant has had a license to sell tobacco, tobacco products, tobacco related devices, electronic delivery devices or nicotine solution 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 local law, City Code provision or other regulation from holding such a license.

116.06 PROHIBITED SALES

It is a violation of this chapter for any person to sell or offer to sell any tobacco, tobacco product, tobacco related device, electronic delivery devices or nicotine solution products:

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

(B) By means of any type of vending machine, except as may otherwise be provided in this section;

(C) By means of self-service methods whereby the customer does not need to make verbal or written request to any employee of the licensed premise in order to receive the tobacco, tobacco related product, tobacco related device, electronic delivery devices or nicotine solution products and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco related device, electronic delivery devices or nicotine solution products between the licensee or the licensee's employee and the customer;

(D) By means of loosies as defined herein;

(E) 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;

(F) By any other means, or to any other person, or in any other manner or form prohibited by federal, state or other local law, city code provision, or other regulations.

116.07 VENDING MACHINES

It is unlawful for any person licensed under this chapter to allow the sale of tobacco, tobacco products, tobacco related devices, electronic delivery devices or nicotine solution products by the means of a vending machine. Penalty, see 116.99

116.08 SELF-SERVICE SALES

It is unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products, tobacco related devices, electronic delivery devices or nicotine solution products by any means whereby 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, the tobacco related device, electronic delivery devices or nicotine solution products between the licensee or his or her clerk and the customer. All tobacco, tobacco products, tobacco related devices, electronic delivery devices or nicotine solution 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, electronic delivery devices or nicotine solution products at the time this chapter is adopted shall comply with this chapter within 90 days following the effective date of this chapter. Penalty, see 116.99

116.09 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, electronic delivery devices or nicotine

solution products 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 chapter 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.

Penalty see 116.99

116.10 COMPLIANCE CHECKS AND INSPECTIONS.

All licensed premises shall be open to inspection by the city law enforcement 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, with the written consent of their parents or guardians, minors over the age of 18 years but less than 21 years to enter the licensed premise to attempt to purchase tobacco, tobacco products, tobacco related devices, electronic delivery devices or nicotine solution products. Minors used for the purpose of compliance checks shall be supervised by designated law enforcement officers or other designated personnel. Minors used for compliance checks shall not be guilty of unlawful purchase or attempted purchase, nor the unlawful possession of tobacco, tobacco products, tobacco related devices, electronic delivery devices or nicotine solution products 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 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.

116.98 VIOLATIONS.

(A) *Notice.* Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation[notice]. The notice shall set forth the nature, date and time of offense, and the amount of the scheduled penalty. The Notice shall inform the alleged violator of his or her right to be heard on the accusation.

(B) *Hearing.* If a person accused of violating this chapter so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

(C) *Hearing officer.* A person(s) designated by the Council shall serve as the hearing officer.

(D) *Decision.* If the hearing officer determines that violation of this chapter did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under 116.99 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, the findings shall be recorded, and a copy provided to the acquitted accused violator.

(E) *Appeals.* Appeals of any decision made by the hearing officer shall be filed in the District Court for the jurisdiction of the city in which the alleged violation occurred.

(F) *Misdemeanor prosecution.* Nothing in this chapter 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.

(G) *Continued violation.* Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

116.99 PENALTY.

(A) *Licenseses.* Any licensee found to have violated this chapter, or whose employee shall have violated this chapter, shall be charged an administrative fine in an amount set by City Council for a first violation of this chapter; a fine in an amount set by City Council for a second offense at the same licensed premises; and a fine in an amount set by City Council for a third or subsequent offense at the same location within a 24-month period. In addition, after the third offense, the license shall be revoked.

(B) *Administrative offense defined.* An administrative offense is any 1 of the offenses listed and identified in division (J) of this section.

(C) *Event defined.* An **EVENT** is a determination that a licensee has committed an administrative offense. A licensee can never be found to have committed more than 1 event per business day, regardless of the number of administrative offenses committed. However, the number of administrative offenses committed within an event may be taken into consideration when determining the appropriate penalty.

(D) *Administrative penalties for non-compliance.* For any license granted under the provisions of this chapter, the City Council may suspend such a license for up to 60 days, may revoke such a license, and/or may impose on a licensee a civil fine not to exceed \$2,000 for each event on a finding that the licensee or its employee has failed to comply with a statute, regulation, or provision of the City Code relating to tobacco, tobacco products, tobacco related devices, electronic delivery devices or nicotine solution products.

(E) *Notice.* Any officer of the Police Department or any other person authorized to enforce this code, upon making a determination that an event has occurred, shall so notify the offender. The notice shall set forth the nature, date and time of offense, and the amount of the scheduled penalty.

(F) *Payment of civil monetary penalty without suspension or revocation.* Once such notice is given, the alleged offender may, within 7 days of the time of issuance of the notice, pay the amount set forth in the notice or may request in writing a hearing, as provided for in division (G) of this section. The penalty may be paid in person or by mail, and payment shall be deemed to be an admission of the offense.

(G) *Hearing prior to imposition of civil monetary penalty.* Any person contesting the determination of an event pursuant to this section may, within 7 days of the time of issuance of the notice, request in writing a hearing by the City Council or designated committee which shall forthwith conduct an informal hearing to determine if a violation has occurred. The City Council or designated committee shall have authority to dismiss the violation or reduce or waive the penalty. If the violation is sustained, the violator shall pay the penalty imposed.

(H) *Failure to pay.*

(1) In the event a party charged with an event fails to pay the penalty, a misdemeanor or petty misdemeanor charge may be brought against the alleged violator in accordance with applicable statutes. If the penalty is paid or if an individual is found not to have committed the event, no such charge may be brought by the city for the same violation.

(2) In the event a party participates in the administrative offense procedures but does not pay the monetary penalty which may be imposed, the city may seek to collect the costs of the administrative offense procedures as part of the subsequent criminal sentence in the event the party is charged and is convicted guilty of the criminal violation.

(I) *Disposition of penalties.* All penalties collected pursuant to this section shall be paid to the Clerk-Treasurer.

(J) *Minimum penalty.* In no event shall a penalty be less than the following:

<i>Administrative Offense</i>	<i>Events Within a 24-Month Period</i>			
	<i>1st Event</i>	<i>2nd Event</i>	<i>3rd Event</i>	<i>4th Event</i>
1. Commission of a felony related to the licensed activity	Revocation	NA	NA	NA
2. Sale of tobacco, tobacco products, tobacco related devices, electronic delivery devices or nicotine solution products while license is under suspension.	Revocation	NA	NA	NA
3. Sale/purchase of tobacco, tobacco products, tobacco related devices, electronic delivery devices or nicotine solution products to/by underage person	\$250	\$500 and 3-day suspension	\$750 and 21-day suspension	Revocation
4. Refusal to allow city inspectors or police admission to inspect premises	\$250	\$500 and 3-day suspension	Revocation	NA

Note: A day shall be defined as a business day.

(K) *Hearing prior to suspension or revocation.* No suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing before the Council, a committee of the Council, or a hearing under the Administrative Procedures Act, as may be determined by the Council

(L) *Other individuals.* Other individuals, other than minors regulated elsewhere in this code, found to be in violation of this chapter may be charged an administrative fee as follows:

- (1) A fine not exceeding \$50 for a first violation;
- (2) A fine not exceeding \$100 for a second violation within 1 year of the first violation;
- (3) A fine not exceeding \$200 for each violation within 1 year of the second violation.

(M) *Misdemeanor.* Nothing in this chapter shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this chapter.

Section 2. City Code Chapter 1 entitled "Definitions and General Provisions Applicable to Entire City Code Including Penalty for Violation" and Section 10.99 entitled "Violation a Misdemeanor" are hereby adopted in their entirety, by reference, as though repeated verbatim herein.

Section 3. This ordinance shall take effect and be in force from and after its passage and publication and be given the Number 28, 4th Series.

Voting Aye: DeMers, Vetter, Riopelle, Johnson, Olstad, and Grassel.

Voting Nay: None.

Absent: Helms.

ATTEST:

David Murphy
City Administrator

Mark Olstad
President of Council

I hereby approve the foregoing Ordinance this 18th day of February, 2020.

Steven Gander
Mayor