

**ORDINANCE NO. 20-08**

**AN ORDINANCE AMENDING SECTION 8-7 OF THE NEW HOPE CITY CODE  
REGULATING SALE OF TOBACCO & RELATED PRODUCTS**

**THE CITY COUNCIL OF THE CITY OF NEW HOPE ORDAINS:**

**Section 1.** Section 8-7, Tobacco and related products is hereby amended to repeal the strikeouts and add the underlined text as follows:

(a) Definitions and interpretations.

- (1) Child-resistant packaging. Packaging that meets the definition set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, and was tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.
- (2) Cigar. Any roll of tobacco that is wrapped in tobacco leaf or in any other substance containing tobacco, with or without a tip or mouthpiece, which is not a cigarette as defined in Minn. Stat. §297F.01, subd. 3, as may be amended from time to time.
- (3) Compliance checks. The system the city uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this ordinance. Compliance checks involve the use of persons under the age of 21 who purchase or attempt to purchase licensed products. Compliance checks may also be conducted by the city or other units of government for educational, research, and training purposes or for investigating or enforcing federal, state, or local laws and regulations relating to licensed products.
- (4) Electronic delivery devices. Any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through the inhalation of aerosol or vapor from the product. Electronic delivery device includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, 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 does not include any product that has been approved or certified by the U.S. 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. Any licensed 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 product, including, but not limited to, any taste or smell relating to 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 licensed product, or by any person authorized or

permitted by the manufacturer to make or disseminate public statements concerning such products, that a product has or produces a taste or smell other than a taste or smell of tobacco will constitute presumptive evidence that the product is a flavored product.

- (6) Indoor area. All space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.
- (7) Licensed products. The term that collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.
- (8) Loosies. The common term used to refer to single cigarettes, cigars, and any other licensed product that have been removed from their original retail packaging and offered for sale. Loosies does not include premium cigars that are hand-constructed, have a wrapper made entirely from whole tobacco leaf, and have a filler and binder made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor.
- (9) Moveable place of business. Any form of business that is operated out of a kiosk, 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.
- (10) Nicotine or lobelia delivery product. Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not a tobacco 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 U.S. Food and Drug Administration as a tobacco-cessation product, a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.
- (11) Pharmacy. A place of business at which prescription drugs are prepared, compounded, or dispensed by or under the supervision of a pharmacist and from which related clinical pharmacy services are delivered.
- (12) Retail establishment. Any place of business where licensed products are available for sale to the general public. The phrase includes but is not limited to grocery stores, tobacco products shops, convenience stores, gasoline service stations, bars, and restaurants.
- (13) Sale. Any transfer of goods for money, trade, barter or other consideration.
- (14) Self-service display. The open display of licensed products in any manner where any person has access to the licensed 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 licensed product between the customer and the licensee or employee.

(15) Smoking. Inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. Smoking also includes carrying or using an activated electronic delivery device.

(16) Tobacco. 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; 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 does not include any product that has been approved by the U.S. 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.

(17) Tobacco-related device. Any rolling papers, wraps, pipes, or other device intentionally designed or intended to be used with tobacco products. Tobacco-related device includes components of tobacco-related devices or tobacco products, which may be marketed or sold separately. Tobacco-related devices may or may not contain tobacco.

(18) Vending machine. Any mechanical, electric or electronic, or other type of device that dispenses licensed products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the licensed product.

**(b)** *License required.*

(1) License required. No person shall sell or offer to sell any licensed product without first having obtained a license to do so from the city pursuant to this ordinance.

(2) Application. An application for a license to sell licensed products must be made on a form provided by the city. The application must 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 will forward the application to the City Council for action at its next regularly scheduled meeting. If the City Clerk determines that an application is incomplete, it will be returned to the applicant with notice of the information necessary to make the application complete. ~~directly, by coin machine, or otherwise, keep for retail sale, sell at retail, or otherwise dispose of, any cigarettes, cigarette wrapper, tobacco, or tobacco products at any place in the city unless he shall have obtained a license therefor as provided in section 8-2 of this Code.~~

- (3) Action. The City Council may approve or deny the application for a license, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary. If the City Council approves the application, the City Clerk will issue the license to the applicant. If the City Council denies the application, notice of the denial will be given to the applicant along with notice of the applicant's right to appeal the decision.
  - (4) Term. All licenses issued are valid for one calendar year from the date of issue.
  - (5) Revocation or suspension. Any license issued may be suspended or revoked following the procedures set forth in subsection (i).
  - (6) Transfers. All licenses issued are valid only on the premises for which the license was issued and only for the person to whom the license was issued. The transfer of any license to another location or person is prohibited.
  - (7) Display. All licenses must be posted and displayed at all times in plain view of the general public on the licensed premises.
  - (8) Renewals. The renewal of a license issued under this ordinance will be handled in the same manner as the original application. The request for a renewal must be made at least 30 days, but no more than 60 days, before the expiration of the current license.
  - (9) Issuance as privilege and not a right. The issuance of a license is a privilege and does not entitle the license holder to an automatic renewal of the license.
  - (10) Minimum clerk age. Individuals employed by a licensed retail establishment under this ordinance must be at least 18 years of age to sell licensed products.
  - (11) Maximum number of licenses. The maximum number of licenses issued by the city at any time is limited to 19. When the maximum number of licenses has been issued, the city may place persons seeking licensure on a waiting list and allow them to apply on a first-come, first-served basis, as licenses are not renewed or are revoked. A new applicant who has purchased a business location holding a valid city license will be entitled to first priority, provided the new applicant meets all other application requirements in accordance with this ordinance.
  - (12) Pharmacies ineligible for licensure. No existing license will be eligible for renewal to any pharmacy, including any retail establishment that operates or contains an on-site pharmacy, and no pharmacy or any retail establishment that operates an on-site pharmacy will be granted a new license.
  - (13) Smoking prohibited. Smoking, including smoking for the purpose of the sampling of licensed products, is prohibited within the indoor area of any retail establishment licensed under this ordinance.
  - (14) Samples prohibited. No person shall distribute samples of any licensed product free of charge or at a nominal cost.
- (c) License fee. No license will be issued under this ordinance until the appropriate license fees are paid in full. The annual fee for such tobacco license shall be as set forth in the city's fee schedule and may be amended from time to time.

(d) Basis for denial of license.

(1) Grounds for denying the issuance or renewal of a license include, but are not limited to, the following:

a. The applicant is under 21 years of age.

b. 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 licensed products.

c. The applicant has had a license to sell licensed products suspended or revoked within the preceding 12 months of the date of application.

d. The applicant fails to provide any of the information required on the licensing application, or provides false or misleading information.

e. The retail establishment for which the license is requested is a moveable place of business. Only fixed-location businesses are eligible to be licensed.

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

(2) Except as may otherwise be provided by law, the existence of any particular ground for denial does not compel the city to deny the license.

(3) If a license is mistakenly issued or renewed to a person, it will be revoked upon the discovery that the person was ineligible for the license under this ordinance. The city will provide the license holder with notice of the revocation, along with information on the right to appeal.

(e) ~~Prohibited Acts~~Restrictions.

(1) In general. No person shall sell or offer to sell any licensed product:

a. By means of any type of vending machine.

b. By means of loosies as defined.

c. 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. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other products subject to this ordinance.

d. 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.

(2) Legal age. No person shall sell any licensed product to any person under the age of 21.

a. Age verification. Licensees must verify by means of government-issued photographic identification that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.

b. Signage. Notice of the legal sales age and age verification requirement must be posted prominently and in plain view at all times at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the city, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.

~~(1) Minors. No person shall sell, give away, or otherwise furnish any cigarette, cigarette paper, tobacco, or tobacco product to any person under the age of 18 years.~~

~~(2) Narcotic drugs. No person shall keep for sale, sell, or dispose of any cigarette, or other tobacco product containing opium, morphine, jimson weed, belladonna, strychnia, cocaine, marijuana, or any other deleterious or poisonous drug, except nicotine.~~

~~(3) Vending machine. No person shall sell or dispense any tobacco product through the use of a vending machine unless the vending machine is in a nonpublic area with no minor access as verified by a premises survey conducted by the police department.~~

~~(34) Self-service merchandising. No person shall allow the sale of licensed products offer for sale or dispense any tobacco product by means of self-service display merchandising. All licensed products must be stored behind the sales counter, in a locked case, in a storage unit, or in another area not freely accessible to the general public. Any retailer selling licensed products at the time this ordinance is adopted must comply with this section within 90 days of the effective date of this ordinance. This section shall not apply to retail stores which derive at least 90 percent of their revenue from tobacco and tobacco-related products and which cannot be entered at any time by persons younger than 18 years of age. Prior to offering for sale any tobacco product by self service merchandising, a licensee must file with the city clerk a statement from a certified public accountant that shows both total gross sales and total sales from tobacco or related products. Said statement must also be filed with the city clerk yearly on or before the renewal date of the license.~~

~~(4) Flavored products. No person shall sell or offer for sale any flavored products.~~

~~(5) Liquid Packaging. No person shall sell or offer to sell any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery service, in packaging that is not child-resistant. Upon request by the city, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.~~

~~(f) (5) Responsibility: Employee violations. Every licensee shall be responsible for the conduct of its employees in while on the licensed premises and regard to the any sale, offer to sell, and furnishing of licensed products on the licensed premises. The sale, offer to sell, or furnishing of any licensed product or other disposition of tobacco products by an employee to a person under 18 years of age shall be considered an act of the licensee for purposes of imposing an administrative fine, license suspension or revocation. Nothing in this section shall be construed as prohibiting the city from also subjecting the employee to any civil penalties that the city deems to be appropriate under this ordinance, state or federal law, or other applicable law or regulation.~~

~~(6) Federal regulations. The Code of Federal Regulations, title 21, part 897.16(c) is incorporated by reference into this Code. Notwithstanding these regulations, all sales of~~

~~tobacco products by vending machines and self-service merchandising must be in compliance with subsections (c) and (d) herein if said New Hope Code sections are inconsistent with the federal regulations.~~

~~(c) *License fee*. The annual fee for such tobacco license shall be as set forth in the city's fee schedule.~~

~~(d) *Display of license*. Every such license shall be openly displayed in the place of business for which it is issued.~~

(ge) *Compliance monitoring*. The police department shall conduct unannounced compliance checks at least once each calendar year at each location where ~~tobacco products licensed~~ products are sold within the city. All licensed premises must be open to inspection by law enforcement officials during regular business hours. In accordance with state law, the city will conduct at least one compliance check that involves the participation of one person between the ages of 17 and 20 to enter licensed premises to attempt to purchase licensed products. Prior written consent is required for any person under the age of 18 to participate in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel. Licensees and applicants shall be informed of this policy at the time of license application and renewal. Violators of these regulations will be subject to more frequent compliance monitoring than non-violating licensees. The police department shall make an annual report to the city council on the compliance checks conducted pursuant to this section.

(h) *Other prohibited acts*.

(1) Prohibited furnishing or procurement. It is a violation of this ordinance for any person 21 years of age or older to purchase or otherwise obtain any licensed product on behalf of a person under the age of 21. It is also a violation for any person 21 years of age and older to coerce or attempt to coerce a person under the age of 21 to illegally purchase or attempt to purchase any licensed product.

(2) Use of false identification. It is a violation of this ordinance for any person to use any form of false identification, whether the identification is that of another person or has been modified or tampered with to represent an age older than the actual age of the person using that identification.

(i) *Exceptions and defenses*.

(1) Religious, spiritual, or cultural ceremonies or practices. Nothing in this ordinance prevents the provision of tobacco or tobacco-related devices to any person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.

(2) Reasonable reliance. It is an affirmative defense to a violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

~~(j) *Violations and penalties*. In addition to being guilty of a misdemeanor, any person violating subsection (b) of this section shall be subject to the following penalties:~~

(1) ~~(4)~~ Violations

- a. Notice. A person violating this ordinance may be issued, either personally or by mail, a citation from the city that sets forth the alleged violation and that informs the alleged violator of his or her right to a hearing on the matter and how and where a hearing may be requested, including a contact address and phone number
- b. Hearings.
  1. Upon issuance of a citation, a person accused of violating this ordinance may request in writing a hearing on the matter. Hearing requests must be made within 10 business days of the issuance of the citation and delivered to the City Clerk or other designated city officer. Failure to properly request a hearing within 10 business days of the issuance of the citation will terminate the person's right to a hearing.
  2. The City Clerk or other designated city officer will set the time and place for the hearing. Written notice of the hearing time and place will be mailed or delivered to the accused violator at least 10 business days prior to the hearing.
- c. Hearing officer. The City Council will designate a hearing officer. The hearing officer will be an impartial employee of the city or an impartial person retained by the city to conduct the hearing.
- d. Decision. A decision will be issued by the hearing officer within 10 business days of the hearing. 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, will be recorded in writing, a copy of which will be provided to the city and the accused violator by in-person delivery or mail as soon as practicable. If the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings will be recorded and a copy will be provided to the city and the acquitted accused violator by in-person delivery or mail as soon as practicable. The decision of the hearing officer is final, subject to an appeal as described in subsection (i)(1)(f) of this section.
- e. Costs. If the citation is upheld by the hearing officer, the city's actual expenses in holding the hearing up to a maximum of \$1,000 must be paid by the person requesting the hearing.
- f. Appeals. Appeals of any decision made by the hearing officer must be filed in Hennepin County district court within 10 business days of the date of the decision.
- g. Continued violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.
- h. Revocation. The city council has the authority to revoke any license as set out in section 8-2 of this Code notwithstanding the provisions of this section regarding violations.

(2) Administrative civil penalties.:

~~a. — individuals. Any person who sells any tobacco product to a person under the age of 18 years is subject to an administrative penalty; and any person under the age of 18 years who attempts to purchase a tobacco product is subject to an administrative penalty. The city council may impose administrative penalties as follows:~~

~~a. — First violation. The city council shall impose a civil fine of at least \$50.00 but not to exceed \$500.00.~~

~~b. — Second violation. The city council shall impose a civil fine of at least \$75.00 but not to exceed \$750.00 for a second violation within 24 months of the initial violation.~~

~~c. — Third violation. The city council shall impose a civil fine of at least \$100.00 but not to exceed \$1,000.00 for a third violation within 24 months of the initial violation.~~

~~d. — Hearing required. No civil penalty shall take effect until the individual has received notice served personally or by mail, of the alleged violation and is given an opportunity for a hearing before a person authorized by the city council to conduct the hearing. A decision that a violation has occurred and a civil penalty is warranted must be in writing. In the event the individual is found to have violated the regulations of this Code, the cost of any hearing, including the hearing examiner's fees and the city's reasonable attorney's fees, shall be assessed against the individual in addition to the civil penalty.~~

~~a. (2) — Administrative civil penalties: Licensees.~~ If a licensee or an employee of a licensee is found to have ~~sold tobacco to a person under the age of 18 years, violated this ordinance,~~ the licensee shall be subject to the administrative sanctions described in the following matrix. In all cases the council shall select which days a suspension will be served. Other mandatory requirements may be imposed on the licensee, including, but not limited to, meetings with the police department to present a plan of action to assure that problems will not continue, mandatory education sessions involving all employees and employers with the police department or other actions that the city council deems appropriate. On a first and second violation, the licensee may elect training in proper identification procedures in lieu of the license suspension. The license suspension and training requirements shall be governed by and are subject to the conditions set out in subsection ~~(i)(2)a, b:~~ of this section.

*Fine and License Suspension*

1st Violation	2nd Violation (within 24 months of prior violation)	3rd Violation (within 24 months of two prior violations)	4th Violation (within 24 months of three prior violations)
\$ <del>300</del> 250.00 plus 3 days suspension	\$750.00 plus 15 days suspension	\$1,500.00 plus 30 days suspension	Revocation

~~a. — Hearing required. No civil penalty shall take effect until the licensee has received notice, served personally or by regular mail, of the alleged violation and is given an opportunity for a hearing before a person authorized by the city council to conduct~~

~~the hearing. A decision that a violation has occurred and a civil penalty is warranted must be in writing. In the event the licensee is found to have violated the regulations of this Code, the cost of any hearing, including the hearing examiner's fees and the city's reasonable attorney's fees, shall be assessed against the licensee in addition to the civil penalty.~~

1. b.—*Training in lieu of suspension.* After the first and second violation within a 24-month period, a licensee may request training from the New Hope Police Department in proper identification procedures. Said training shall be at the expense of the licensee, shall be in lieu of the entire three-day license suspension for a first violation and ten of the 15-day license suspension for the second violation required by subsection (i)(2)a. of this section, and shall be conducted per the following conditions:

i. 1.—Training for all employees of a licensee must be completed within two training sessions at the discretion of the New Hope Police Department.

ii. 2.—If more than one licensee is requesting the training, the New Hope Police Department retains control in deciding how many training sessions are necessary to accommodate the number of employees taking the training.

iii. 3.—It shall be the responsibility of the licensee to make certain that all employees successfully complete the required training. Failure to do so means the licensee has failed to meet the "training in lieu of suspension" requirement of the administrative penalty and will be subject to the entire license suspension.

iv. 4.—The licensee shall pay for all of the following costs for the training: supplies and materials, any facility costs, the personnel expenses for the trainer, all administrative costs of the training and any other costs staff deems necessary to conduct the training. Payment for the training must be made to the city clerk prior to the commencement of the training. Failure to make the payment will result in the cancellation of the training and the immediate imposition of the appropriate license suspension.

(3) Other individuals. Individuals, other than persons under the age of 21 regulated by subsection (i)(3) of this section, who are found to be in violation of this ordinance will be subject to an administrative penalty of \$50.00.

(4) Persons under the age of 21. Persons under the age of 21 who use a false identification to purchase or attempt to purchase licensed products may only be subject to non-criminal, non-monetary civil penalties such as tobacco-related education classes, diversion programs, community services, or another penalty that the city determines to be appropriate. The City Council will consult with court personnel, educators, parents, children and other interested parties to determine an appropriate penalty for persons under the age of 21 in the city. The penalty may be established by ordinance and amended from time to time.

(5) Misdemeanor prosecution. Nothing in this section prohibits the city from seeking prosecution as a misdemeanor for any alleged violation of this ordinance by a person 21 years of age or older.

(k) Severability. If any section or provision of this ordinance is held invalid, such invalidity will not affect other sections or provisions that can be given force and effect without the invalidated section or provision.

(1) Effective date. This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.

~~(3) Defense. It is a defense to the charge of selling tobacco to a person under the age of 18 years that the licensee or individual, in making the sale reasonably and in good faith relied upon representation of proof of age described in Minn. Stat. § 340A.503, subd. 6, par. (a).~~

~~(4) Exemption. Only persons ages 16 or 17 years old may be enlisted to assist in the tests of compliance provided that written consent from the person's parent or guardian has been obtained and that the person shall at all times act only under the direct supervision of a law enforcement officer or an employee of the licensing department or in conjunction with an in-house program that has been preapproved by the police department. A person who purchases or attempts to purchase tobacco related products while in this capacity is exempt from the penalties imposed by this section.~~

~~(5) Revocation. The city council has the authority to revoke any license as set out in section 8-2 of this Code notwithstanding the provisions of this section regarding violations.~~

**Section 2.** Effective Date. This ordinance shall be effective upon passage and publication.

APPROVED by the New Hope City Council this 25<sup>th</sup> day of May, 2020.

ATTEST

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Kathi Hemken, Mayor

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Valerie Leone, City Clerk