

**ORDINANCE NO. 515**

**AN ORDINANCE** to amend Staples City Code Section 10.4, relating to Tobacco.

THE CITY COUNCIL OF THE CITY OF STAPLES ORDAINS:

**SECTION 1.** Section 10.4 is hereby amended by deleting the Section in its entirety and substituting in lieu thereof the following:

**SECTION 10.4 TOBACCO AND RELATED DEVICES AND PRODUCTS.**

**Sec. 10.4.01. Purpose.** This Section shall be intended to regulate the sale, possession, and use of tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery 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 related devices, electronic delivery devices, or nicotine or lobelia delivery products, 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 Minn. Stat. § 144.391.

**Sec. 10.4.02. 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:

- a. "Child-Resistant Packaging" shall mean 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.
- b. "Compliance Checks" shall mean the system the City uses to investigate and ensure that those authorized to sell tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of minors who attempt to purchase tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products. Compliance checks may also be conducted by the City or other units of government for the educational, research and training purposes or for enforcing appropriate federal, state or local laws and regulations relating to tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products.
- c. "Direct Supervision" shall mean being in the immediate presence and witnessing the sale by a minor employee.

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- d. "Electronic Delivery Devices" shall mean a product containing or delivering nicotine, lobelia, or any other substance intended for human consumption through inhalation of aerosol or vapor from the product. Electronic delivery devices includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-pipes, vape pens, mods, tank systems, or under any other product name or descriptor. Electronic delivery devices includes any component part of a product, whether or not marketed or sold separately. Electronic delivery devices 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.
- e. "Loosies" shall mean the common term used to refer to a single or individually packaged cigarette.
- f. "Minor" shall mean any natural person who has not yet reached the age of eighteen (18) years.
- g. "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 transactions.
- h. "Nicotine or Lobelia Delivery Products" shall mean any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco or an electronic delivery device as defined in this Section. Nicotine or lobelia delivery products does not include any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation or for other medical purposes, and is being marketed and sold solely for that approved purpose.
- i. "Retail Establishment" shall mean any place of business where tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, and restaurants.
- j. "Sale" shall mean any transfer of goods for money, trade, barter, or other consideration.
- k. "Self-Service Merchandising" shall mean open displays of tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products in any manner where any person has access to the tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery 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 related device, electronic delivery device, or nicotine or lobelia delivery product between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

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- l. "Smoking" The inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other tobacco or plant product, or inhaling or exhaling vapor or aerosol from an electronic delivery device. Smoking also includes carrying a lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation.
- m. "Tobacco" or "Tobacco Products" shall mean 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 products 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 or forms of tobacco. Tobacco does not include any 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.
- n. "Tobacco Related Devices" shall mean any pipe, rolling papers, or other device intentionally designed or intended to be used with tobacco products. Tobacco related devices includes components of tobacco related devices which may be marketed or sold separately.
- o. "Vending Machine" shall mean any mechanical, electric or electronic, or other type of device that dispenses tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product.

**Sec. 10.4.03. License.** No person shall sell or offer to sell any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product without first having obtained a license to do so from the City of Staples.

- a. Application. An application for a license to sell shall be made on a form provided by the City. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the City deems necessary. Upon receipt of a completed application, the City Clerk shall forward the application to the City Council for action at its next regularly scheduled Council Meeting. If the City Clerk determines that an application is incomplete, it shall be returned to the applicant with notice of the information necessary to make the application complete.

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- b. Action. The City Council may either approve or deny the license, or it may deny 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 approves the license, the City Clerk shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the decision.
- c. Term. All licenses issued under this Section shall be valid from the date of issue and shall expire on December 31 in the year of issue.
- d. Revocation or Suspension. Any license issued under this Section may be revoked or suspended as provided in the Violations and Penalties sections.
- e. Transfers. All licenses issued under this Section shall be 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.
- f. Moveable Place of Business. No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this Section.
- g. Display. 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 Section shall be handled in the same manner as the original application. The request for a renewal shall be made at least thirty days, but no more than, sixty days before the expiration of the current license.
- i. Smoking. Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a retail tobacco license. Smoking for the purposes of sampling tobacco, tobacco-related devices, or electronic delivery devices is prohibited.

**Sec. 10.4.04. Fees.** No license shall be issued under this Section until the appropriate license fee is paid in full. The fee for a license under this Section shall be \$60.00.

**Sec. 10.4.05. Basis for Denial of License.** The following shall be grounds for denying the issuance or renewal of a license under this Section:

- a. The applicant is under the age of 18 years;
- 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 tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products;

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- c. The applicant has had a license to sell tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products suspended or revoked within the preceding twelve months of the date of application;
- d. The applicant fails to provide any information required on the applications, or provides false or misleading information; or
- e. The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation, from holding such a license.

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 Section;

**Sec. 10.4.06. Prohibited Sales.** It shall be a violation of this Section for any person to sell or offer to sell any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product:

- a. To any person under the age of eighteen (18); or
- b. By means of any type of vending machine, unless minors are at all times prohibited from entering the licensed establishment.; or
- c. By means of loosies as defined in Section 10.4.02. d; or
- d. Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substance except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process; or
- e. 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.

**Sec. 10.4.07. Self-Service Sales.** It shall be unlawful for a licensee under this Section to allow the sale of tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products by any means whereby the customer may have access to such items without having to request them from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product between the licensee or the clerk and the customer. All tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery 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. This shall not apply to retail establishments which derive at least 90 percent of their revenue

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from tobacco and tobacco related products and where the retailer ensures that no minor is present, or permitted to enter at any time.

**Sec. 10.4.08. Liquid Packaging.** It shall be a violation of this Section for any person to 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 device, in packaging that is not child-resistant. Upon request, a licensee shall provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

**Sec. 10.4.09. Responsibility.** All licensees under this Section shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery 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 Section shall be construed as prohibiting the City of Staples from also subjecting the clerk to whatever penalties are appropriate under this Section, state or federal law, or other applicable law or regulation.

**Sec. 10.4.10. Compliance Checks and Inspections.** All licensed premises shall be open to inspection by the Staples Police Department or other authorized City officials 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 fifteen (15) years but less than eighteen (18) years, to enter the licensed premises to attempt to purchase tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products. Minors used for the purpose of compliance checks shall be supervised by designated law enforcement officers or other designated City personnel. Minors used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase, nor the unlawful possession of tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products when such items are obtained or attempted to be obtained as a part of the compliance check. Nothing in this Section 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.

**Sec. 10.4.11. Other Illegal Acts.** Unless otherwise provided, the following acts shall be a violation of this ordinance.

- a. Illegal Sales. It shall be a violation of this Section for any person to sell or otherwise provide any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product to any minor.
- b. Illegal Possession. It shall be a violation of this Section for any minor to have in his or her possession any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product. This subdivision shall not apply to minors lawfully involved in a compliance check.

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- c. Illegal Use. It shall be a violation of this Section for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product.
- d. Illegal Procurement. It shall be a violation of this Section for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco related device, electronic delivery device, and nicotine or lobelia delivery product and it shall be a violation of this Section 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 related device, electronic delivery device, or nicotine or lobelia delivery product. This subdivision shall not apply to minors lawfully involved in a compliance check.
- e. Use of False Identification. It shall be a violation of this Section 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 has been modified or tampered with to represent an age older than the actual age of the person.
- f. Minor Employee. It shall be a violation of this Section for any person under the age of 18 to sell tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product without "direct supervision" by a licensee's employee who is 18 years or older.

**Sec. 10.4.12. Violations.**

- a. 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 that shall inform the alleged violator of his or her right to be heard on the accusation. The alleged violator has ten (10) days from the date of issuance of the citation to request a hearing.
- b. Hearings. If a person accused of violating this Section so requests, a hearing shall be scheduled stating the time and place and be provided to the accused violator.
- c. Hearing Officer. An independent person shall serve as the hearing officer.
- d. Decision. If the hearing officer determines that a violation of this Section did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under Section 10.4.13, 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.
- e. Appeals. Appeals of any decision made by the hearing officer shall be filed in the district court with jurisdiction for the location in which the alleged violation occurred.

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- f. Misdemeanor Prosecution. Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this Section.
- g. Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

**Sec. 10.4.13. Penalties.**

- a. Licensees. Any licensee found to have violated this Section, or whose employee shall have violated this Section, shall be charged an administrative fine of \$75 for a first violation of this ordinance; \$200 for a second offense at the same licensed premises within a twenty-four month period; and \$250 for a third or subsequent offense at the same location within a twenty-four month period. In addition, after the third offense, the license shall be suspended for not less than seven days.
- b. Other Individuals. Other individuals, other than minors regulated by item “c” of this Section, found to be in violation of this Section shall be charged an administrative fee of \$100.
- a. Minors. Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products may be subject to an administrative fine or may be subject to tobacco-related education classes, diversion programs, community services, or another penalty that the City believes will be appropriate and effective.
- b. Misdemeanor. Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any violation of this Section.

**Sec. 10.4.14. Exception and Defenses.** Nothing in this Section shall prevent the providing of tobacco 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 Section for a person to have reasonably relied on proof of age as described by state law.

**Sec. 10.4.15. Severability and Savings Clause.** In any portion of this Section 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 provision of this Section.

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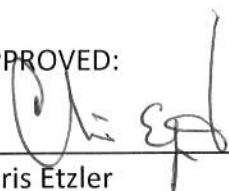
**Sec. 10.4.16. Summary Publication.** The Council hereby determines that the text of the summary of this ordinance marked "Official Summary of Ordinance No. 515," and a copy of which is attached to this ordinance, clearly informs the public of the intent and effect of this ordinance. The Council further determines that publication of the title and this summary will clearly inform the public of the intent and the effect of this ordinance. The Clerk shall file a copy of this ordinance and the summary in the Clerk's office which shall be available for inspection by any person during regular office hours. A copy of the ordinance shall be available in the community library, if there is one, or if not, in any other public location which the Council designates.

**Sec. 10.4.17. Effective Date.** This ordinance shall take effect upon publication.


**SECTION 2. Effective Date.** The ordinance becomes effective from and after its passage and publication.

Adopted this 26th day of December, 2017.

APPROVED:

  
\_\_\_\_\_  
Chris Etzler  
Mayor

ATTEST:

  
\_\_\_\_\_  
Diane Archer  
City Clerk

First Reading: December 12, 2017

Second Reading: December 26, 2017

Adoption: December 26, 2017

Published: January 4, 2018

