



## STAFF REPORT

TO: Mayor Keis and Members of the City Council

FROM: Heidi Heller, City Clerk/HR Manager

DATE: January 12, 2022

RE: Workshop – Discuss Potential Amendments to Tobacco Licensing

### ACTION TO BE CONSIDERED

Discuss potential amendments to City Code Chapter 802, Tobacco Products.

### BACKGROUND

Last June when the Little Canada tobacco license renewals were being considered, Council members stated that they would like to consider amendments to the tobacco code. After the issues from one of the tobacco store owners during the pandemic, and learning that more cities are further restricting the number of tobacco licenses issued and products that can be sold, Council questioned why the City was still issuing licenses for tobacco product sales when there is so much information about how harmful tobacco is to public health.

Little Canada has two types of tobacco licenses: Tobacco Store or General Sales & Display. The tobacco store license is for a business whose primary business is tobacco products, and the sales & display license limits the amount of square footage in the store that can be dedicated to tobacco products. This license type is for retailers like a gas station or liquor store. The City Code limits the number of tobacco stores licenses to two, but has no limit on the number of sales & display licenses that can be issued. The current tobacco license holders are:

#### GENERAL SALES & DISPLAY TOBACCO LICENSES - no limit on number of licenses

1. BP Station - 300 Little Canada Road
2. Hoggsbreath - 2504 Rice Street
3. Speedway (Kath Bros) - 3096 Rice Street
4. Tierney's Liquors - 2770 Rice Street
5. CV Liquor - 2760 Rice Street

#### TOBACCO STORE LICENSES – limit of 2 licenses issued at the same time

1. Little Canada Smoke Shop – 27 Little Canada Road E.
2. Hookah Hideout – 3 Little Canada Road E.

In May 2013, the City Council amended the tobacco code to no longer permit any indoor smoking and sampling, but included specific language that would allow the indoor smoking to continue at the two tobacco stores that were in existence at the time of the ordinance adoption. Both of these businesses are still operating and offering indoor smoking. The number of general sales & display licenses has remained very consistent for the last several years.

In 1975 Minnesota was the first state to enact a Clean Indoor Air Act, the Minnesota Clean Indoor Air Act (MCIAA) was passed, and then was amended by the Freedom to Breathe Act of 2007, which

substantially expanded the prohibition on smoking to nearly all indoor areas to provide protection from secondhand smoke. The MCIAA was further amended in 2014 to prohibit the use of electronic cigarettes in certain settings. The MCIAA allows the lighting of tobacco or the use of electronic delivery devices within the indoor area of a defined tobacco or vape shop “by a customer or potential customer for the specific purpose of sampling tobacco products.” This sampling exception is how tobacco and hookah stores are allowed to have indoor smoking.

Staff receives inquiries regularly about how to open a new tobacco or hookah shop in Little Canada. Some of the draw to Little Canada is the assumption that indoor smoking is allowed since there are two stores that offer it. If a tobacco store license were to become available, it would be taken quickly. Several cities in the metro area have adopted or are considering adopting, a variety of the following restrictions on tobacco products:

Possible amendments to Chapter 802:

1. Allow 0 tobacco licenses. This would have the ultimate goal of eventually not having any tobacco products sold in Little Canada. No tobacco licenses would be approved for new businesses or owners - only the current businesses (or owners) could be issued a renewed tobacco license
2. Put an end date to the allowance of all indoor smoking and sampling for all businesses.
3. Require a minimum distance between tobacco retailers
4. Prohibit specific business types from selling tobacco products (pharmacies is the type of business typically prohibited from selling tobacco, but any type can be designated)
5. Point-of-Sale requirements:
  - a. Prohibit the sale of certain or all flavors of tobacco products
  - b. Regulating the price of commercial tobacco products, such as establishing minimum prices for cigars and restricting the redemption of price promotions and coupons

This is the initial discussion for staff to receive feedback and direction to see if Council is agreeable to amending the tobacco products chapter of the City Code. If Council would like to proceed with any changes, staff would notify the seven tobacco license holders in order to give them an opportunity to review potential City Code changes and comment on the changes.

#### RECOMMENDATION

Review and discuss potential amendments to City Code Chapter 802, Tobacco Products. If Council agrees to move forward with amendments, direct staff to notify current tobacco license holders and draft language for an ordinance amending City Code Chapter 802.

#### More information:

Minnesota Department of Health – Minnesota Clean Indoor Air Act

<https://www.health.state.mn.us/communities/environment/air/mciaa/index.html>

#### Attachments

- City Code Chapter 802, Tobacco Products
- 1-25-2012 Council Workshop Minutes – discussion prior to adopting ordinance prohibiting indoor smoking but allowing the existing two businesses to continue indoor smoking
- MN Clean Indoor Health Information

## 802. TOBACCO PRODUCTS

### 802.005 PURPOSE AND INTENT

Because the City of Little Canada recognizes that tobacco use has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this ordinance is intended to regulate the sale of tobacco, tobacco-related devices, and electronic delivery devices for the purpose of enforcing and furthering existing laws, and to protect youth and young adults against the serious effects associated with use and initiation. Youth and young people are particularly susceptible to the addictive properties of tobacco products, and are particularly likely to become lifelong users. National data show that about 95 percent of adult smokers begin smoking before they turn 21. The ages of 18 to 21 are a critical period when many smokers move from experimental smoking to regular, daily use. Electronic delivery device use among youth has recently tripled. Young minds are particularly susceptible to the addictive properties of nicotine. As a result, approximately 3 out of 4 teen smokers end up smoking into adulthood.

This ordinance is intended to regulate the sale of tobacco, tobacco-related devices, and electronic delivery devices to protect the public, especially youth and young adults, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in Minn. Stat. § 144.391, as it may be amended from time to time.

802.010. DEFINITIONS. For purposes of this regulation, the following terms shall mean:

- (a) "General Sales and Display" means a section of any business establishment not meeting the definition of Tobacco Store in paragraph (e) of this section, which displays for sale Licensed Products as an accessory use to the establishment's primary business purpose. The sale of such Licensed Products shall be merely incidental to the establishment's primary business purpose. The section displaying Licensed Products shall comprise an area no greater than fifty (50) cubic feet and must be located within the immediate vicinity of the establishment's primary point of sale. There can be no entrance door from the outside opening directly to the section of store displaying Licensed Products. A separate point of sale for Licensed Product sales shall be prohibited.
- (b) "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; cheroots; stogies; perique; granulated, plug-cut, crimp-cut, ready rubbed and other smoking tobacco; snuff; snuff flowers; 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, prepared in

such a manner as to be suitable for chewing or smoking in a pipe, or other tobacco related devices. Tobacco Product 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.

- (c) "Self-Service Merchandising" means a method of displaying Licensed Products, in a manner in which such Licensed Products are accessible to the public without the intervention of any employee.
- (d) "Vending Machine" means any mechanical, electric or electronic device, appliance or any other medium or object designed or used for vending purposes which, upon insertion of money, tokens or any other form of payment, dispenses Licensed Products.
- (e) "Tobacco Store" means a retail establishment with an entrance door opening directly to the outside that derives more than 90 percent of its gross revenue from the sale of Licensed Products in which the sale of other products is merely incidental. This definition does not include an accessory tobacco section of any business establishment meeting the definition of General Sales and Display in paragraph (a) of this section.
- (f) "Tobacco-Related Device" means any pipe, rolling papers, ashtray, or other device intentionally designed or intended to be used with Tobacco Products. Tobacco-Related Devices include components of tobacco-related devices or tobacco products, which may be marketed or sold separately. Tobacco-Related Devices may or may not contain tobacco.
- (g) "Compliance Checks" are 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 shall involve the use of persons under the age of 21 as authorized by this ordinance. Compliance checks shall also mean the use of persons under the age of 21 who attempt to purchase Licensed Products 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 Licensed Products..
- (h) "Individually Packaged" means the practice of selling any Licensed Products wrapped individually for sale. Individually wrapped Licensed Products shall include but not be limited to single cigarette packs, single bags or cans of loose tobacco in any form, single cans or other packaging of snuff or chewing tobacco, e-cigarettes, and vapor inhalers. Cartons or other packaging containing more than a single pack or

other container as described in this definition shall not be considered individually packaged.

- (i) “Electronic Delivery Devices” mean any product containing or delivering nicotine or lobelia any other substance, whether natural or synthetic, intended for human consumption that can be used to deliver nicotine, lobelia or any other substance through inhalation of vapor or any other product or byproduct by any means, or any component part of such a product, that is not a Tobacco Product as defined in this section. Electronic Delivery Devices include, but are not limited to: e-cigarettes, e-cigars, personal vaporizers, e-pipes, vape pens, mods, tank systems, or any other product where it delivers a substance into the human body through the inhalation of vapor or any other product or byproduct. Electronic Delivery Devices do 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.
- (j) “Smoking” means inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco, plant, natural or synthetic product. Smoking includes carrying or using an activated 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.
- (k) “Indoor Area” means 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. A standard window screen (0.011 gauge with an 18 by 16 mesh count) is not considered a wall.
- (l) “Licensed Products” mean the term that collectively refers to any tobacco product, tobacco-related device, or electronic delivery device.

802.020. LICENSE REQUIRED. No person shall, directly or indirectly, keep for retail sale, sell at retail, keep for wholesale, sell at wholesale or otherwise dispose of Licensed Products unless licensed by the City of Little Canada. A Tobacco Store license is available to a premises meeting the definition in Chapter 802.010 (e); a General Sales and Display license is available to a premises meeting the definition in Chapter 802.010 (a). License applications shall be submitted to the City Administrator, as required under Chapter 802.030, together with the applicable license fee as determined from time to time by City Council resolution. A license may be issued only for the specific premises and individual identified in the application.

802.025. RESTRICTIONS ON NUMBER OF LICENSES. The number of Tobacco Store Licenses within the City shall not exceed two (2). There is no limit on the number of General Sales and Display Licenses.

802.030. APPLICATION.

- (a) Any person desiring a license to engage in the business of dealing and/or selling Licensed Products shall first make application therefor to the Council of the City by filing with the City Administrator for presentation to the Council an application in writing, which application shall set forth the name and place of residence of the applicant and the exact location of the place at which the applicant proposes to carry on said business. An application to renew a Tobacco Store license shall include a certified statement by the business owner that the store is in compliance with: (1) the requirement that more than 90% of gross revenue is derived from the sale of Licensed Products and (2) the building criteria set forth in 802.010 (a). Such certification shall include the following: total gross revenues, total gross revenues derived from the sale of approved products, and total gross revenues derived from the sale of Licensed Products, and floor plans. The City reserves the right to request additional financial information, as deemed necessary. Said application shall be signed by the applicant in person, and when received by the City Administrator shall be placed on file; provided, however, that no such application shall be received unless it is accompanied by the payment of a fee as provided for herein.
  
- (b) The City Council may either approve or deny the license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council shall approve the license, the City Clerk shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the City Council's decision. Grounds for denying the issuance or renewal of a license under this chapter include, but are not limited to the following:
  - (1) The applicant is under the age of 21 years;
  - (2) 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;
  - (3) The applicant has had a license to sell Licensed Products revoked within the preceding 12 months of the date of application;
  - (4) The applicant fails to provide any information required on the application, or provides false or misleading information;

- (5) The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a license;
  - (6) The application fails to meet the requirements of City Code;
  - (7) To protect the health, safety, and welfare of the City and its residents.
- (c) Revocation or suspension. The imposition of an administrative fine upon a licensee pursuant to Chapter 802.090 and/or suspension of license or revocations of a license will be processed pursuant to Little Canada City Code Chapter 800. The City Council may revoke or suspend a license granted under this chapter for any of the grounds identified in paragraph (b) of this section. 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. Licensees whose licenses have been revoked shall not be eligible for another license under this chapter for a minimum period of one year from date of said revocation.
- (d) 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. No transfer of any license to another location or person shall be valid without the prior approval of the City Council.

802.040. LICENSE GRANTED BY RESOLUTION. The Council shall, after whatever investigation it deems necessary, by resolution grant the license applied for by such applicant, if in the opinion of the Council the applicant is entitled thereto. The issuance of a license issued under this section shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

802.045. PROXIMITY RESTRICTION. No Tobacco Store or General Sales and Display license shall be granted pursuant to this section to any person for any retail sales of Licensed Products within 500 feet of any school, playground, house of worship, or youth-oriented facility, as measured by the shortest line between the space to be occupied by the proposed licensee and the occupied space of the school, playground, house of worship, or youth-oriented facility, unless that person has been in the business of selling Licensed Products in that location before the date this section was enacted into law for at least one year. For the purpose of this section, a “youth-oriented facility” is defined to include any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or which primarily sells, rents, or offers services or products that are consumed or used primarily by persons under the age of 21.

802.050. LICENSE FEE. The annual license fee shall be determined by resolution of the City Council. If the application is made after July 1, the annual fee shall be pro-rated on a monthly basis.

802.060. TERM. Licenses shall be for a term of one year. The annual license shall commence July 1 of each year.

802.070. LICENSE RESTRICTIONS. A license shall be issued subject to the following restrictions:

- (a) The following restrictions apply to premises licensed as a Tobacco Store:
  - (1) No person shall permit a person under the age of 21 to smoke Licensed Products for the purposes of sampling those products or provide samples of Licensed Products free of charge or at a nominal cost to a person under the age of 21.
  - (2) No more than 50% of the gross revenue of the store may be derived from the sale of tobacco-related devices.
  - (3) Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a retail tobacco license. Smoking lighting, heating and burning of Licensed Products, for the purposes of sampling Licensed Products is prohibited. Notwithstanding the preceding, smoking may occur in a Tobacco Store if all of the following circumstances are met:
    - i. The smoking is by a customer or potential customer for the specific purpose of sampling tobacco;
    - ii. The Tobacco Store has held a license from the City to sell Licensed Products at that location for at least six months prior to the May 2013 enactment of this provision; and
    - iii. The owner of the establishment has maintained a valid retail tobacco license and has abided by all applicable laws.
    - iv. Any smoking allowed under this exemption shall be prohibited if the license holder loses the license or transfers title to, relinquishes management or control of, or sells the business to any other individual or business entity.
  - (4) Smoking from electronic delivery device for any reason is strictly prohibited in any Tobacco Store.
- (b) The following restrictions apply to premises licensed for General Tobacco Sales and Display:



- (1) The establishment shall fully comply with the Minnesota Clean Indoor Air Act, Minn. Stat. § 144.411 to 144.417.
  - (2) There shall be no display of Licensed Products except for cigarette lighters for sale on the licensed premises, whether the sale is for the benefit of the licensee or for a third party (e.g. consignment).
- (c) The following restrictions apply to all licenses:
- (1) Vending machines used to dispense Licensed Products shall be prohibited.
  - (2) No sales shall be made by means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the Licensed Products and whereby there is not a physical exchange of the Licensed Products between the licensee, or the licensee's employee, and the customer.
  - (3) A licensee shall comply with all applicable regulations of the State of Minnesota relating to the sale or dispensing of Licensed Products. If there is a conflict between the regulations of the State and the regulations of the City, the more restrictive regulations shall control.
  - (4) Every licensee is responsible for the conduct of its employees while on the licensed premises. Any sale or other disposition of Licensed Products by an employee of a licensee shall be considered an act of the licensee.

802.080. SALES TO PERSONS UNDER THE AGE OF 21. No person shall give, sell or dispense any Licensed Products to a person under twenty-one (21) years of age. Any person aged 21 years or older convicted of violating this section shall pay a fine of \$100.00 for the first such conviction. Any person aged 21 years or older convicted of violating this section twice shall pay a fine of \$125.00. Any person aged 21 years or older convicted of violating this section three times shall pay a fine of \$150.00. Any person aged 21 years or older convicted of violating this section more than three times during any 24-month period may be guilty of a misdemeanor. Persons under the age of 21 who are convicted of violating this section 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.

- (a) 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.

802.090. ADMINISTRATIVE FINE, SUSPENSION, OR REVOCATION. Any violation of the City's regulations relative to the issuance of any license or of any conditions/restrictions attached to the issuance of such license shall be cause for the imposition of an administrative fine, the suspension of the license, or the revocation of the license.

- (a) If the violation relates to a restriction of Section 802.070 allowing a person under the age of 21 to sample a Licensed Product or providing to a person under the age of 21 a sample of a Licensed Product , the Council may suspend the license for up to 60 days or revoke the license. In addition to such action, or in lieu of such action, the Council may impose a civil fine not to exceed \$1,000.00 for each violation.
- (b) If the violation relates to the sale of Licensed Products to or provision of Licensed Products to a person under the age of 21, by the licensee or the licensee's employee, the following administrative fines, suspensions, or revocations shall be imposed.
  - (1) The first such violation shall subject the licensee to the payment of an administrative fine of \$200.00;
  - (2) The second violation at the same location within 24 months of a previous violation shall subject licensee to the payment of an administrative fine of \$500.00.
  - (3) The third violation at the same location within 24 months of two previous violations shall subject the licensee to the payment of an administrative fine of \$1,000.00 plus a seven (7) business day suspension of the license.
  - (4) The individual responsible for the sale to a minor shall be charged an administrative penalty of \$50.00, following notice of the violation and an opportunity for a hearing before the City Council.
  - (5) The City Council retains the discretion to consider suspension or revocation of a license at any time, if in the view of the Council the circumstances of the violation call for such a sanction.
- (c) The imposition of an administrative fine upon a licensee, and/or suspension of license or revocation of a license will be processed pursuant to Little Canada City Code Chapter 800. Licensees, whose licenses have been revoked, shall not be eligible for another General Sales and Display license or a Tobacco Store license for a minimum period of one year from the date of said revocation.

802.100. INSPECTION/COMPLIANCE CHECKS. Any applicant or licensee shall permit the City, or its representatives, to inspect and examine the place of business described in the application or license. Any refusal on the part of the applicant, or licensee, to permit such inspection

will be sufficient grounds for the Council to refuse the application applied for or suspend a license previously granted. The City of Little Canada, or its authorized representative, will conduct at least one compliance check that involves the participation of a person between the ages of 15 and 17 and at least one compliance check that involves the participation of a person between the ages of 18 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. Any finding of noncompliance with the requirements of this Chapter or other applicable regulations shall constitute a violation of this section.

#### 802.105. VIOLATIONS.

##### (A) Violations.

- (1) 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.
- (2) Hearings.
  - (a) 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.
  - (b) 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.
- (3) 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.
- (4) 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 section 11, division (A)(6) of this section.

- (5) **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.
- (6) **Appeals.** Appeals of any decision made by the hearing officer must be filed in Wilkin County district court within 10 business days of the date of the decision.
- (7) **Continued violation.** Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

802.110. 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.

(Source: Ord. 3, Amended: Ord. 331, 441, 513, 689, 707, 716, 726, 742, 753, 755, 770, 779, 838)

**MINUTES OF THE WORKSHOP MEETING  
CITY COUNCIL  
LITTLE CANADA, MINNESOTA**

**JANUARY 25, 2012**

Pursuant to due call and notice thereof a workshop meeting of the City Council of Little Canada, Minnesota was convened on the 25th day of January, 2012 in the Council Chambers of the City Center located at 515 Little Canada Road in said City.

Mayor Bill Blesener called the meeting to order at 6:00 p.m. and the following members of the City Council were present at roll call:

CITY COUNCIL:	Mayor	Mr. Bill Blesener
	Council Member	Ms. Shelly Boss
	Council Member	Mr. John Keis
	Council Member	Mr. Mike McGraw
	Council Member	Mr. Rick Montour

ALSO PRESENT:	City Administrator	Mr. Joel R. Hanson
	City Attorney	Mr. Trevor Oliver
	City Clerk	Ms. Kathy Glanzer

**TOBACCO  
ORDINANCE**

Mayor Blesener opened the workshop meeting to review the City Attorney's January 25, 2012 report relative to the City's Tobacco Ordinance.

The City Attorney presented his report noting there are two separate issues addressed in the report: Two Tiered Licensing System and Tobacco Store License. Within the topic of a Tobacco Store License, the two primary issues to be addressed relate to sampling and limitation of total product display area for tobacco-related products.

The City Attorney reported that he does not have a specific recommendation relating to the issue of sampling. Based on his research of the sampling issue, the leading approaches either expand the indoor smoking ban to eliminate the exemption altogether, attempt to eliminate some of the methods of generating revenue from sampling, or do nothing. He reviewed in detail these approaches as outlined in his report.

With regard to the issue of limiting the shelf space for tobacco-related products, the City Attorney noted that the initial proposal discussed by the Council was to limit this shelf space to 15%. The Attorney felt that may be too restrictive and after looking at a number of ordinances and tobacco

**MINUTES  
CITY COUNCIL  
JANUARY 25, 2012**

shop businesses, suggested that 50% might be a reasonable limitation. The City Attorney suggested that there seems to be two categories of tobacco shops, one that sells primarily tobacco and tobacco-related products and the other whose inventory is overwhelmingly pipes and glassware. The City Attorney indicated that there appears to be stark differences in these two types of tobacco stores. He felt that a 50% limitation would place the tobacco store far more into the first category of a store that sells primarily tobacco and tobacco-related products and achieve the City's goals.

Blesener noted that the report also outlines an option to require a tobacco store provide proof that 90% of its gross revenue comes from the sale of tobacco and tobacco devices. The City Attorney noted that this relates to the State's paraphernalia laws. He also noted that City's are not pre-empted from drafting ordinances addressing drug paraphernalia. The Attorney noted that the City of Moorhead is being sued over an ordinance it enacted a couple of weeks ago. That ordinance defines a tobacco-related product, i.e. a pipe is a device whose primary purpose is for the smoking of tobacco.

The City Attorney felt that with regard to a tobacco shop there needs to be a balance of the amount of tobacco for sale as well as the devices for sale.

John DeRosa, Little Canada Smoke Shop, stated that it is typical to see 70% of product display area as devices and the remainder tobacco. DeRosa indicated that 80% of his revenue comes from the sale of tobacco. He also indicated that the devices he sells are for tobacco use only. The City Attorney noted that an alternative to limiting the display area for tobacco-related devices is to require a certain percentage of gross revenue come from tobacco sales.

Blesener suggested that the discussion first concentrate on the sampling issue, and asked the Attorney to explain the difference between a total ban on sampling and what the City of Minneapolis did in defining sampling practices to eliminate revenue. The City Attorney noted that a total ban on sampling would prohibit sampling altogether. The Minneapolis adopted an ordinance prohibiting a tobacco store owner from providing a smoking device for the purpose of sampling, providing in exchange for a fee seating within or access to the indoor area of a tobacco products shop, permitting within the indoor area of a tobacco products shop the sampling of any tobacco product which was not furnished by the tobacco products shop on the date and at the time sampling occurs. The Minneapolis ordinance allows a tobacco products shop to distribute single service samples of tobacco suitable for smoking subject to the limitations on indoor sampling or smoking provided in the ordinance. The City Attorney

**MINUTES  
CITY COUNCIL  
JANUARY 25, 2012**

indicated that Minneapolis was immediately sued by a hookah-lounge owner with the lawsuit taking aim at the ban on “providing devices” which has significantly greater impact on hookahs and water pipes than it does on cigars.

The City Attorney felt that the Minneapolis ordinance could be rewritten to take out the possible discrepancy between hookahs and other forms of tobacco, by focusing less on the object and more on the commercial transaction. The Attorney reviewed his proposed modifications of the Minneapolis provision as outlined on page 3 of his report. The Attorney noted that by preventing a store from charging for samples and also prohibiting the smoking of purchased items, the City no longer has to define sample sizes.

Blesener asked about the impact to cigar stores. The City Attorney reported that the Minneapolis ordinance allows cigar stores to continue. The Attorney indicated that under his language, the store owner could only offer small segments or loose leafs for the purpose of sampling. This is not a complete ban on indoor smoking or the lighting of tobacco, but tries to get back to the practice of sampling just like any other product.

McGraw noted that the MN Department of Health says any indoor smoking is a violation of State Statute except for “the lighting of tobacco in a tobacco products shop” subject to the meeting of certain criteria as laid out in MN Statutes 144.4167. McGraw stated that it appears the intent was not to allow for the smoking of samples that are charged for. McGraw felt that the State Statute should be amended to address this loophole. The City Attorney noted that the MN Department of Health indicates in their November 2, 2011 letter that because of the impediments to enforcement of this State Law, local municipalities play a big role in determining whether establishments can allow smoking in their jurisdictions. He also noted that the State Law does not define sampling. McGraw asked if there were any pending court cases that might define sampling. The City Attorney was not aware of any.

McGraw asked if any communities that have outright banned sampling been sued. The City Attorney indicated that Minneapolis and Moorhead have been sued. The Cities of St. Anthony, St. Cloud, Bloomington, and others have banned sampling as well. Blesener noted that Mounds View has banned sampling, but grandfathered in existing businesses. The City Attorney replied that that was correct, but he was not aware of any other cities that have taken this approach. The City Attorney reported that cities have the authority to ban sampling. One of the reasons to grandfather an existing business, however, is to avoid a protracted effort to make the ban go into effect. McGraw asked if a business would have a

**MINUTES  
CITY COUNCIL  
JANUARY 25, 2012**

legitimate claim against the City if it enacted an outright ban on sampling. The City Attorney replied that while a business could make a claim, that business would not prevail.

Keis indicated that the City should not start on the premise of concern about being sued. The first issue is whether the City wants this activity and noted the police calls that other cities have experienced generated by hookah clientele. Keis stated that the difficult time he has is rationalizing that the State says there should be no smoking indoors, yet has provided this loophole.

David Nelson, The Hookah Hideout, stated that the intent of the Legislature was to leave an opening for a niche business such as his and cigar shops. Keis felt that the opening was directed toward cigar shops. Nelson agreed, but indicated that the Legislature left the loophole for good reason. He also took issue with a comment Keis made about hookah clientele, with Keis indicating that his intention related to police calls at hookah establishments. Nelson reported that according to his research there are not many calls for service and the nature of the calls are comical.

McGraw stated that for him the issue is the State Law banning indoor smoking and the fact that other businesses must abide by that law. The issue has nothing to do with the patrons of hookah establishments or calls from police. Nelson pointed out that the State Law allows the lighting of tobacco for the purpose of sampling. Blesener felt that the intent was to allow sampling of a free tobacco sample, not to allow someone to purchase tobacco and smoke it at a hookah lounge for 1 to 2 hours.

Blesener asked Katie Engman of the Tobacco Coalition what the intent of the Legislature was relative to sampling. Engman replied that the MN Department of Health is trying to get a statement from the authors of this legislation. It was her understanding that the intent was to allow the sampling of cigars. The City Attorney reported that a statement of this nature would not hold up in court. After a vote is taken and a law enacted, it stands on its own. Any ambiguities are subject to interpretation and up to the Legislature to fix. The Attorney felt that the result of the sampling provision was unforeseen and might get dealt with by the Legislature at some point. The City Attorney again pointed out that the City Council has the authority to be more restrictive.

Blesener asked if there was consensus on the Council to ban sampling. Montour stated that he did not support such a ban, and pointed out the example of the City getting a hotel/restaurant development that may want to also have a cigar shop. The City Attorney again noted the Minneapolis ordinance that appears to be friendlier to cigar shops than to hookah



**MINUTES  
CITY COUNCIL  
JANUARY 25, 2012**

lounges. Montour asked if the City would be more receptive to a cigar shop than to a hookah lounge. Montour felt that The Hookah Hideout has been a good neighbor in the City, and his perspective on the business has changed from when it first moved into Little Canada.

Keis stated that he would be happy to have a cigar shop in the City. He indicated that his issue is with sampling and indicated that the two do not necessarily go hand-in-hand. McGraw pointed out that cigar shops will typically allow the sampling of a \$50 to \$60 cigar, not the \$10 cigar. He felt the sampling loophole was being used by hookah lounges to get around the law. Montour agreed, but suggested that until the State takes action there was nothing Little Canada could do. Blesener disagreed. Keis pointed out that if the City does not ban sampling it could end up with several more hookah lounges. Keis stated that one or two may be OK, but what was the limit.

Nelson pointed out that the City can put a cap on the number of licenses. McGraw did not agree with a cap as that provided a protection for existing businesses. Montour noted that the City can have tiers of licenses with a tier for tobacco shops.

DeRosa indicated that he sells high-end cigars and has allowed customers to sample a cigar in his store. The City Attorney pointed out that this is closer to the intent of the State Law than a smoking lounge where people are sitting around watching TV and smoking for long periods of time. Nelson pointed out that most cigar shops have smoking lounges and rent humidors. The City Attorney agreed and pointed out that many cigar shops were established prior to enactment of the indoor smoking ban. The City Attorney informed Nelson that he did not disagree with him about the way cigar shops work.

Blesener stated that he would support a ban of sampling while grandfathering in existing businesses similar to what Mounds View did. If the Legislature eventually bans sampling, then the hookah lounge as it currently operates would not be allowed.

DeRosa felt that his business should be grandfathered in and he should have the ability to sell his business if he chooses to. The City Attorney noted that sampling is only a small portion of the Little Canada Smoke Shop business; therefore, DeRosa would be able to sell his business. The banning of sampling and grandfathering in of existing businesses has a much larger impact on The Hookah Hideout.

Blesener again asked the Council's consensus. Boss reported that she would support the banning of sampling, but the grandfathering in of the

**MINUTES  
CITY COUNCIL  
JANUARY 25, 2012**

existing businesses, allowing those businesses to continue to exist even if they were sold to other operators. Blesener and McGraw supported banning sampling and grandfathering in the existing businesses, but not allowing the grandfathering to extend to a new operator. Montour agreed with Boss. Keis stated that he supported the ban and the grandfathering. He was just not sure that the grandfathering should be of a permanent nature. Keis felt that the Legislature should address the sampling loophole. Keis indicated that the City may have the ability to deal with any issues that might arise at the two tobacco stores through code enforcement or other means.

The City Attorney indicated that he would draft the ordinance amendment for Council review with alternative language on the grandfathering issue that the Council can choose from. Keis indicated he may support allowing the permanent grandfathering. Blesener indicated that the City Attorney should draft the various options and the Council would have additional discussion on the grandfathering issue.

Blesener asked about restrictions on the hours of operation. The City Attorney noted that State Law regulates the hours of operation for some businesses, and the City has also done so through Conditional Use Permits and Planned Unit Developments. DeRosa reported that his shop is open on Mondays from 11 a.m. to 8 p.m., other weekdays from 10 a.m. to 9 p.m., Saturdays from 10 a.m. to 9 p.m., and Sundays from 12 Noon to 6 p.m. Nelson reported that his business is open Sundays and Mondays from 5 p.m. to 11 p.m. and the remaining days of the week from 5 p.m. to 2 a.m. Blesener recommended hours of operation no later than 2 a.m.

The Council then discussed the issue of limiting the total product display area for tobacco-related products versus the State's 90% tobacco-related revenue requirement. That requirement is that 90% of gross revenue comes from tobacco and tobacco devices. The City Attorney again noted his suggestion that in addition to the State's 90% revenue requirement, the City could require that at least 50% of gross revenue come from tobacco sales. Another option is limiting the display area to 50% of tobacco-related products.


McGraw asked out the City would verify the gross revenue requirement. DeRosa indicated that he would be able to provide invoices at the end of each license year so the 90% requirement could be verified. DeRosa stated that he had no concerns meeting this requirement. He also reported that he did not want his business associated with certain things, and the products that he sells are tobacco and tobacco-related products. The Council commented that a future business may not be as conscientious.

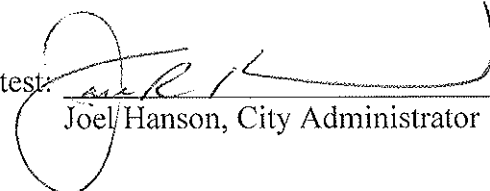
**MINUTES  
CITY COUNCIL  
JANUARY 25, 2012**

The City Attorney reported that the intent is to try to avoid a novelty shop and endure that there is a balance of tobacco and tobacco-related projects. He also suggested that rather than requiring the business owner to turn in reams of paper, a summary report could be provided with the understanding that the back-up paperwork would be available upon request.

Blesener recommended that the City Attorney draft a proposed ordinance amendment for the Council's consideration based on this evening's discussions.

There being no further business, the workshop was adjourned at 7:28 p.m.

  
\_\_\_\_\_  
Bill Blesener, Mayor

Attest:   
\_\_\_\_\_  
Joel Hanson, City Administrator

## Minnesota Clean Indoor Air Act

The Minnesota Clean Indoor Air Act (MCIAA) prohibits smoking in many indoor places ([Minn. Stat. §§ 144.411 to 144.417](#)). The legislation was enacted in 1975 in an effort to protect public health, comfort, and the environment by prohibiting smoking around children and ill or injured persons. The MCIAA was amended by the Freedom to Breathe Act of 2007 ([Laws 2007, ch. 82](#)), which substantially expanded the prohibition on smoking to nearly all indoor areas to provide protection from secondhand smoke. The MCIAA was further amended in 2014 to prohibit the use of electronic cigarettes in certain settings.

### *Where is smoking prohibited?*

The MCIAA prohibits smoking in public places, at public meetings, in places of employment, and in public transportation. Places of employment are indoor areas where two or more persons perform services, whether or not the persons are paid. Public places and places of employment include the following:

- Arenas
- Auditoriums
- Banquet facilities
- Bars and other food or liquor establishments
- Bowling establishments
- Common areas of rental apartment buildings
- Employee cafeterias
- Factories
- Libraries
- Lounges
- Museums
- Offices
- Restaurants
- Retail stores and other commercial establishments
- Theaters
- Vehicles used for work purposes during the hours of operation if more than one person is present
- Warehouses

Smoking is also specifically prohibited in day care centers, in day care homes during their hours of operation, in certain health care facilities and clinics, and in public transportation vehicles, with certain exceptions. In addition, all tobacco products are prohibited in public schools, except for tobacco lit by an adult as part of a traditional Indian spiritual or cultural ceremony.

### *Where is smoking permitted?*

Smoking is permitted in the following places:

- A family home or group family day care provider home, outside of its hours of operation
- Public transportation vehicles when they are being used for personal use
- Specified rooms in residential health care facilities
- Separated, well-ventilated areas of locked psychiatric units
- Specified areas for use in peer-reviewed scientific studies related to smoking
- Private residences and automobiles when not used as a place of employment
- Hotel and motel guest rooms
- Tobacco products shops for the purpose of sampling products
- Heavy commercial vehicles
- Farm vehicles and construction equipment

- Buildings on family farms
- A disabled veterans' rest camp in Washington County

Smoking is permitted by Native Americans as part of a traditional Native American spiritual or cultural ceremony and by actors as part of a theatrical performance. The MCIAA also permits smoking outside, unless it is limited or prohibited by local government.

***How is the use of electronic cigarettes treated under the MCIAA?***

The MCIAA's definition of smoking does not include the use of electronic cigarettes, so the act does not broadly prohibit the use of electronic cigarettes in public places, at public meetings, at places of employment, or in public transportation. The use of electronic cigarettes is prohibited in day care centers; family home and group family day care provider homes during their hours of operation; health care facilities and clinics, with certain exceptions; any building owned or operated by the state or a political subdivision; any facility owned by a public college or university; any facility licensed by the commissioner of human services, or licensed by the commissioner of health if also governed by federal licensing requirements; and public schools.

***What are the responsibilities of proprietors?***

Proprietors or other people or entities who control the use of a public place, public transportation, place of employment, or a public meeting must make reasonable efforts to prevent smoking inside of these places, including:

- posting signs or employing other appropriate means of prohibiting smoking;
- asking smokers to refrain from smoking;
- asking smokers who do not refrain from smoking to leave the premises;
- handling smokers who refuse to leave in a manner consistent with other persons acting in a disorderly manner or as a trespasser;
- not providing ashtrays or matches in areas where smoking is prohibited; and
- in a restaurant or bar, not serving an individual who smokes in an area where it is prohibited.

***Who enforces the Minnesota Clean Indoor Air Act?***

The Department of Health (MDH) enforces the MCIAA and can delegate enforcement to community health boards. MDH can use the enforcement procedures in the Health Enforcement Consolidation Act to ensure compliance with the MCIAA, including issuing fines of up to \$10,000 against proprietors for violations. Also, peace officers can cite proprietors and individuals who violate the MCIAA. It is a petty misdemeanor to smoke, or to permit someone to smoke, in an area where smoking is prohibited or restricted by the MCIAA.

***Can local governments enact stricter ordinances?***

The MCIAA authorizes local units of government to enact and enforce more stringent measures than those provided in the MCIAA to protect individuals from secondhand smoke, including limiting or prohibiting smoking in outdoor areas.

**For more information:** Contact legislative analyst Elisabeth Klarqvist at 651-296-5043. Additional information is also available from the Minnesota Department of Health at <http://www.health.state.mn.us/divs/eh/indoorair/mciaa/ftb/index.html>.

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