

To: **Mayor and City Council**  
From: **Nate Burkett, City Manager**  
Date: **October 18, 2020**

## **Tobacco Licensing Ordinance**

---

### **BACKGROUND INFORMATION:**

City Staff has received a number of calls from individuals inquiring about our tobacco licensing in recent weeks, which caused us to consider the impact of our current tobacco licensing ordinance.

As you may be aware, many communities in the Twin Cities metro area, state and country are moving to limit the sales of various tobacco products. There are even some communities who are planning to prohibit the sale of tobacco products entirely over a period of time.

After review of West St. Paul's licensing code, staff is recommending consideration of the following amendments to the city's tobacco licensing code. The proposed changes limits the number of stores in West St. Paul that are "specialty tobacco retailers" to three. With these proposed changes, no current tobacco licensees would lose their license.

Staff recommends these changes for the general health, safety and welfare of the community. General availability of tobacco and tobacco specialty products has been linked to lower health outcomes for a population. Due to other nearby communities enacting greater restrictions on the sale of tobacco products it is likely that demand will be pushed across West St. Paul's borders. In order to proactively protect the general health, safety and welfare of the community it is reasonable to restrict the number of "tobacco specialty retailers" in the city.

#### **Amend City Code section 113.02 as follows:**

*Specialty Tobacco Retailer(s). means a retail establishment with an entrance door opening directly to the outside that derives at least fifty (50) percent of its gross revenue from the sale of tobacco products, tobacco related devices or electronic delivery devices and in which the sale of other products is merely incidental. "Specialty Tobacco Retailer" does not include a tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license.*

#### **Amend City Code section 113.03 as follows:**

*(D) Maximum number of licenses issued to "Specialty Tobacco Retailers". The maximum number of licenses issued by the city at any time to "Specialty Tobacco Retailers" is limited to three (3). 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.*

This language is copied from the model ordinance provided by the Public Health Law Center at Mitchell Hamline available on page 12 at this [link](#).

**Additional Considerations Related to the Staff Recommendation**

1. Does the Council want to lower the threshold from 50%? A lower threshold of 25%, for example, would be unlikely to impact gas stations, grocery stores, convenience stores and pharmacies that hold tobacco licenses, but would make it easier to legally identify a “tobacco specialty retailer”.
2. Does the Council want to use a population standard? The city currently issues 3 licenses to businesses that would be classified as “Tobacco specialty retailers”. We could set the standard at one license per 10,000 population? That would likely eventually sunset the city to 2 licenses for tobacco specialty retailers.
3. Do we want to consider or bring up the [Bloomington option](#), which sunsets all tobacco licenses? OR do we want to limit/disallow the issuance of new tobacco licenses?
4. Does the council want to limit the total number of licenses allowed for all establishments? WSP currently issues a total of 18 tobacco licenses:
  - a. Four licenses for tobacco only
  - b. Five that are Motor Vehicle Related/Tobacco, typically gas stations that sell tobacco products
  - c. Nine that are a combination of liquor/tobacco and/or fireworks

**Other Policies to Consider**

1. Does the Council want to consider additional tobacco restrictions such as limiting the sale of flavored tobacco or tobacco related products, setting a minimum price on tobacco products or other?
2. Does the Council want to define and include CBD products? It is possible that a tobacco specialty retailer business would also sell CBD products and claim that CBD is greater than 50% of revenue. This is less likely a concern if we lower the threshold for percentage of tobacco sales.
3. Does the Council want to consider adopting pro-active recreational marijuana laws in anticipation of the State of Minnesota eventually legalizing recreational marijuana?

**FISCAL IMPACT:**

Fund	Department	Account	Amount

**STAFF RECOMMENDATION:**

- Direct staff to advance the staff recommended ordinance changes, and any other potential changes to the tobacco licensing ordinance to a public hearing at regular council meeting.
- If the Council believes it to be in the best interest of the Community; direct staff to research and prepare a work session topic for the regulation of CBD products and/or recreational marijuana.