

To: **Mayor and City Council**
Through: **Ryan Schroeder, City Manager**
From: **Brian Sturgeon, Interim Chief of Police**
Date: **October 14, 2019**

Open Council Work Session Discussion - Restricting Tobacco Sales

BACKGROUND INFORMATION:

Tonight is the final reading and public hearing regarding the proposed ordinance changes to section 113.05 and 113.07 of the City Code. These changes will prohibit the sale and transfer of tobacco and tobacco products to individuals under 21 years old. The changes also include a requirement for sellers to display signage that states the sale to individuals under the age of 21 is prohibited. The signage will be provided by the Police Department in order to provide for message continuity. If adopted, the changes will take effect January 1, 2020.

Notices have been sent to all license holders regarding proposed changes. The first notice was sent on September 11, 2019 and a follow-up notice was sent on September 24, 2019. License holders have been made aware of the public hearing and final reading tonight. Legal publication was also done.

I have received two comments from tobacco license holders. The owner of Steve's Tobacco has no issue with this ordinance change. A representative from the corporate office of Wal-Mart fully supports these changes. They have a company policy that already prohibits the sale of tobacco products to persons under 21 years of age.

Staff has received numerous comments from individuals and organizations who are very passionate about this topic. There is overwhelming support of the efforts taking place to restrict the sale of tobacco and related products to those under 21. However, there are concerns with wording in the proposed ordinance that deals with PUP (purchase, use and possession) penalties and the lack of specific language dealing with electronic nicotine delivery devices (e-cigarettes and the like).

If it is the desire of Council to address these two topics, staff recommends that oral amendments be proposed and passed. The first topic dealing with PUP penalties, the following oral amendment can be made:

West Saint Paul City Ordinance 113.07(D), line 1 and 2, strike "Person under the age of 21" and replace with "minor". Line 4, strike "such person" and replace with "a minor". Line 5 strike "person under the age of 21" and replace with "minor".

Staff has found an issue with subdivision (F) which if passes, does not allow a person under the age of 21 to sell tobacco without written consent of their parents. There are many people ages 18 to 20 that work as cashiers in a retail establishment that holds a tobacco license. Some of these workers live on

their own, have little to no contact with parents and it appears unreasonable to ask them to obtain parent's permission to sell tobacco at their place of employment. Staff recommends the following oral amendment be proposed and passed:

West Saint Paul City Ordinance 113.07(F) strike "person under the age of 21" and replace with "minor".

The second area of concern deals with electronic delivery devices, also known as e-cigarettes. Some have argued that the City Ordinance does address these items as tobacco related devices. However, Tobacco 21 and others have asked for specific language in our ordinance to ensure there is no confusion or arguments dealing with the regulation of e-cigarettes and similar devices.

Minnesota State Statute 609.685, sub.(1)(c) has very specific language defining an electronic delivery device. It states:

"Electronic delivery device" means any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, as in marketed and sold for such an approved purpose.

If it is the Council's desire to include electronic delivery devices in the ordinance, the following oral amendments can be proposed and passed:

West Saint Paul City Ordinance 113.05, sub(A), shall read, "It shall be unlawful for any person licensed under this chapter to allow the sale of tobacco, tobacco products or tobacco-related devices which includes electronic delivery devices as defined by Minnesota State Statute 609.685, sub(1)(c):"

Subdivision (B)(1),(2),(3), and(5) after "tobacco products" insert "including electronic delivery devices as defined by Minnesota State Statute 609.685, Sub(1)(c)"

This ordinance will not make it illegal for 18 to 20 year olds to possess, use or attempt to purchase tobacco, tobacco related products including electronic delivery devices.

There have been requests put into the ordinance wording specifically prohibiting the enforcement of tobacco violations for minors; those under 18 years old. Some claim studies have shown enforcement does not reduce underage use of tobacco.

Minnesota State Statute 609.685, sub 3 states:

"Except as otherwise provided in subdivision 2, whoever possesses, smokes, chews, or otherwise ingests, purchases, or attempts to purchase tobacco, tobacco-related devices, or electronic delivery devices and is under the age of 18 years is guilty of a petty misdemeanor."

and subdivision 4 states:

“Effect on local ordinances. Nothing in subdivision 1 to 3 shall supersede or preclude the continuation or adoption of any local ordinance which provides for more stringent regulation of the subject matter in subdivisions 1 to 3.”

The later prohibits local ordinances from making less restrictive regulations. Staff recommends not placing in the ordinance restrictions on enforcement of state statute.

The Dakota County Attorney’s Office has in place numerous diversion programs including juvenile tobacco violations. Education is key in this diversion program and the administrators believe education is an effective method of reducing underage tobacco usage.

FISCAL IMPACT:

		Amount
Fund:	101	\$250.00 (est.)
Department:	42100	
Account:	40350	

STAFF RECOMMENDATION:

Discuss this method of making changing to the ordinance to ensure it meets the needs of the Council. Council is required to hold a public hearing at the regular Council meeting on this matter prior to passage of the final reading, with amendments if changes are desired. Staff is available to answer any questions.