CITY OF LANESBORO ORDINANCE NO. 12-2-97

AN ORDINANCE RELATING TO THE SALE, POSSESSION, AND USE OF TOBACCO PRODUCTS, AND TOBACCO RELATED DEVICES IN THE CITY, AND TO REDUCE THE ILLEGAL SALE, POSSESSION, AND USE OF SUCH ITEMS TO AND BY MINORS.

An ordinance relating to the sale, possession, and use of tobacco products, and tobacco related devices in the City of Lanesboro and to reduce the illegal sale, possession, and use of such items to and by minors.

The City Council of the City of Lanesboro, hereinafter referred as the "City", Ordains:

Section 100. Purpose. Because the City recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, and tobacco related devices, and such sales, possession, and use are violations of both State and Federal laws; and because studies, which the City hereby accepts and adopts, have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and because smoking 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 shall be intended to regulate the sale, possession, and use of tobacco, tobacco products, and tobacco related devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, and tobacco related devices, 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.

Section 200. 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 tile definitions given to them:

> Subd. 1 Tobacco or Tobacco Products. "Tobacco" or "Tobacco products" shall mean any substance or item containing tobacco leaf, including, but not limited to, cigarettes; cigars; pipe tobacco; snuff, fine cut or other chewing tobacco; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff flowers; Cavendish; shorts; plug and twist tobaccos; dipping tobaccos; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing, or smoking.
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> Subd. 2 Tobacco Related Devices. "Tobacco related devices" shall mean any tobacco product as well as a pipe, rolling papers, or other device intentionally designated or intended to be used in a mariner which enables the chewing sniffing, or smoking of tobacco or tobacco products.

Subd. 3 Self-Service Merchandising. "Self-Service Merchandising" shall mean open displays of tobacco, tobacco products, or tobacco related devices in any manner where any person shall have access to the tobacco, tobacco products, or tobacco related devices, 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 product, or tobacco-related device between the Customer and the licensee or employee. Self-service merchandising shall not include vending machines.

Subd. 4 Vending Machine. "Vending Machine" shall mean any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products, or tobacco related devices upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product, or tobacco-related device.

Subd. 5 Individually Packaged. "Individually packaged" shall mean the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not be limited to, single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this subdivision shall not be considered individually packaged.

Subd. 6 Loosies. "Loosies" shall mean the common term used to refer to a single or individually packaged cigarette.

Subd. 7 Minor. "Minor" shall mean any natural person who has not yet reached the age of eighteen (18) years.

Subd. 8 Retail Establishment. "Retail Establishment" shall mean any place of business where tobacco, tobacco products, or tobacco related devices are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, and restaurants.

Subd. 9 Moveable Place of Business. "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 sales transactions.

Subd. 10 Sale. A "sale" shall mean any transfer of goods for money, trade, barter, or other consideration.

Subd. 11 Compliance Checks. "Compliance Checks" shall mean the system the City uses to investigate and ensure that those authorized to sell tobacco, tobacco products, and tobacco related devices are following and complying with the requirements of this ordinance.

Compliance checks shall involve the use of minors as authorized by this ordinance. Compliance checks shall also mean the use of minors who attempt to purchase tobacco, tobacco products, or tobacco related devices 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 tobacco, tobacco products, and tobacco related devices.

Section 300 License. No person shall sell or offer to sell any tobacco, tobacco products, or tobacco-related device without first having obtained a license to do so from the City.

Subd. 1 Application. An application for a license to sell tobacco, tobacco products, or tobacco related devices 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 of Lanesboro for action at its next regularly scheduled Council meeting. If the Clerk shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

Subd. 2 Action. The Council may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the Council shall approve the license, the Clerk shall issue the license to the applicant. If the 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 Council's decision.

Subd. 3 Term. All licenses issued under this ordinance shall be valid for one calendar year from the date of issue.

Subd. 4 Revocation or Suspension. Any license issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties section of this ordinance.

Subd. 5 Transfers. All licenses issued under this ordinance 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 Council.

Subd. 6 Moveable Place of Business. No license shall be issued to a movable place of business. Only fixed location businesses shall be eligible to be licensed under this ordinance.

Subd. 7 Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

Subd. 8 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. The issuance of a license issued under this ordinance 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.

Section 400. Fees. No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The fee for a license under this ordinance shall be no less than $60.00 and the fee for such license shall be set on a year-to-year basis by Resolution of the City of Lanesboro. The license fees may be prorated on a monthly basis for licenses issued during the license year. However, no refunds shall be issued should the licenses no longer carry on said licensed activity.

Section 500. Basis for Denial of License. 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. The following shall be grounds for denying the issuance or renewal of a license under this ordinance

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 or tobacco products, or tobacco related devices.

C. The applicant has had a license to sell tobacco, tobacco products, or tobacco related devices revoked within the preceding twelve months of the date of application.

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

E. The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license.

Section 600. Prohibited Sales. It shall be a violation of this ordinance for any person to sell or offer to sell any tobacco, tobacco product, or tobacco-related device:

A. To any person under the age of eighteen (18) years.

B. By means of any type of vending machine, except as may otherwise be provided in this ordinance.

C. 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 tobacco, tobacco product, or tobacco-related device and whereby there is not a physical exchange of the tobacco, tobacco product, or tobacco-related device between the licensee or the licensee's employee, and the customer, other than for cartons or multi-pack units as allowed by Section 800 herein.

D. By means of loosies as defined in Section 200 of this ordinance.

E. 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.

F. 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.

Section 700 Vending Machines. It shall be unlawful for any person licensed under this ordinance to allow the sale of tobacco, tobacco products, or tobacco related devices by the means of a vending machine.

Section 800. Self-Service Sales. It shall be unlawful for a licensee under this ordinance to allow the sale of tobacco, tobacco products, or tobacco related devices by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product, or the tobacco-related device between the licensee or his or her clerk and the customer. All tobacco, tobacco products, and tobacco related devices 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. Any retailer selling tobacco, tobacco products, or tobacco related devices at the time this ordinance is adopted shall comply with this Section within 60 days following, the effective date of this ordinance. However, cartons and multi-pack units may be offered and sold through open displays accessible to the public until the effective date and implementation of Code of Federal Regulations, Title 21, Part 897.16(c), which are incorporated herein.

Section 900. Responsibility. All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, or tobacco related devices 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 from also subjecting the clerk to whatever penalties are appropriate under this ordinance, State or Federal law, or other applicable law or regulation.

Section 1000. Compliance Checks and Inspections. All licensed premises shall be open to inspection by the City or city police or other authorized City official 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 premise to attempt to purchase tobacco, tobacco products, or tobacco related devices. Minors used for the purpose of compliance checks shall be supervised by City designated law enforcement officers or other designated City personnel. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, or tobacco related devices when such items are obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting, the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this Section shall prohibit compliance checks authorized by State of Federal laws for educational, research, or training purposes, or required for the enforcement of a particular State or Federal law.

Section 1100. Other Illegal Acts. Unless otherwise provided, the following acts shall be a violation of this ordinance:

Subd. 1 Illegal Sales. It shall be a violation of this ordinance for any person to sell or otherwise provide any tobacco, tobacco product, or tobacco-related device to any minor;

Subd. 2 Illegal Possession. It shall be a violation of this ordinance for any minor to have in his or her possession any tobacco, tobacco product, or tobacco-related device. This subdivision shall not apply to minors lawfully involved in a compliance check. Further, minors of the age of 16 or 17 employed as a clerk on the licensed premises may transact a sale of tobacco, tobacco products, or a tobacco-related device, not otherwise in violation hereof.

Subd. 3 Illegal Use. It shall be a violation of this ordinance for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, or tobacco-related device.

Subd. 4 Illegal Procurement. It shall be a violation of this ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, or tobacco-related device, and it shall be a violation of this ordinance 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 product, or tobacco-related device. This subdivision shall not apply to minors lawfully involved in a compliance check.

Subd. 5 Use of False Information. It shall be a violation of this ordinance 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 ace older than the actual age of the person.

Section 1200 Violations.

Subd. 1 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 which shall inform the alleged violator of his or her right to be heard on the accusation.

Subd.2 Hearings. If a person accused of violating this ordinance so requests in writing addressed to the City Clerk, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

Subd. 3 Hearing Officer. The Lanesboro City Council shall serve as the hearing officer.

Subd. 4 Decision. 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 under Section 1300 of this ordinance, 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.

Subd. 5 Appeals. Appeals of any decision made by the hearing officer shall be filed in the district court for the City in which the alleged violation occurred.

Subd. 6 Misdemeanor Prosecution. Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this ordinance. If the City elects to seek Misdemeanor prosecution, no administrative penalty shall be imposed.

Subd. 7 Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

Section 1300 Penalties.

Subd. 1 Licensees and Employees. Any licensee, found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative fine of $100.00 for a first violation of this ordinance; $200.00 for a second offense at the same licensed premises within a 24-month period; and $300.00 for a third or subsequent offense at the same location within a 24-month period. In addition, after the third offense, the license shall be suspended for not less than seven days. Nothing shall prevent the City from imposing a suspension on either the first or second offense.

Subd. 2 Other Individuals. Other individuals, other than minors regulated by subdivision 3 of this Subsection, found to be in violation of this ordinance shall be charged an administrative fee of $100.00.

Subd. 3 Minors. Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, or tobacco related devices, shall be in violation of this ordinance and shall be charged an administrative fee of $50.00 for a first violation, $100.00 for a second violation, and $200.00 for a third violation. Upon violation,

the appropriate school officials shall be notified of the violation. Additionally, the minor may be referred to the local authority for prosecution as a juvenile offender under applicable State of Minnesota law, and shall have the consequences from that referral in addition to the penalties hereunder.

Subd. 4 Misdemeanor. Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any violation of this ordinance or applicable State Law.

Section 1400. Exceptions and Defenses. Nothing in this ordinance shall prevent the providing of tobacco, tobacco products, 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 ordinance for a person to have reasonably relied on proof of age as described by State law.

Section 1500 Severability and Savings Clause. If any section or portion of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation or affect the validity and enforceability of any other section or provision of this ordinance.

Section 1600 Effective Date. This ordinance shall be in full force and effect from and after January 1, 1998.

Passed and approved this 2nd day of December, 1997 by the City of Lanesboro.

Vernon W. Groen

Vernon Groen, Mayor

Attest: Stephen T. Sarvi

Stephen T. Sarvi, City Clerk/Administrator