



## AGENDA ITEM #8.1

### REPORT TO CITY COUNCIL

**Report Prepared by: Nancy Malecha**

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**Date:** March 5, 2020

**Subject:** Tobacco Ordinance Amendment

**Report:** At the November 5, 2019 City Council Meeting, a consensus of the Council agreed to proceed with the implementation of a City ordinance changing the age from 18 to 21 to purchase tobacco products. Since then, federal legislation has also been enacted raising the minimum age for tobacco sales to 21.

Attached is the revised ordinance amending Chapter 9, Article 5 of the City Code regarding license and business regulations for tobacco regulations. Additions are noted in red and deletions are noted as strikethroughs. These revisions are recommended by the Public Health Law Center and reviewed by the City Attorney.

Also, all licensed tobacco retailers in the City of Pequot Lakes were mailed the attached letter at the beginning of February notifying them of this proposed ordinance amendment and to seek their comments. To date, no comments have been received.

**Council Action Requested:**

1. Council motion amending Chapter 9, Article 5 of the City Code regarding license and business regulations for tobacco regulations.
2. Council motion authorizing the summary publication. A 4/5ths vote of the Council is required.

**POLICE**  
218.568.8111  
Fax 218.568.5647  
[plpd@pequotlakes-mn.gov](mailto:plpd@pequotlakes-mn.gov)



[www.pequotlakes-mn.gov](http://www.pequotlakes-mn.gov)

**Eric Klang**  
Chief of Police  
4638 Main Street  
Pequot Lakes, MN 56472

February 4, 2020

Dear Licensed Tobacco Retailer:

As a licensed tobacco retailer in the City of Pequot Lakes, you may be interested in reducing youth and young adult access to commercial tobacco. Minnesota cities and counties are required to license and regulate the sale of commercial tobacco and related products. The Pequot Lakes City Council is considering a revision to the City's Tobacco Ordinance, in Chapter 9, Article 5 of the City Code, to reflect the current federal law. This ordinance revision will increase the age to purchase tobacco products from 18 to 21 years old with the goal of decreasing rates of youth commercial tobacco use, which have risen in recent years due to more local youth vaping tobacco products. This ordinance revision will also allow the City of Pequot Lakes to monitor compliance and enforcement of sales to young people ages 18 to 21. The current tobacco licensing fee schedule for retailers would not need to be adjusted due to this proposed ordinance amendment.

A summary of the proposed ordinance amendment is posted on the City's website [www.pequotlakes-mn.gov](http://www.pequotlakes-mn.gov) under the Pending Ordinance Amendments sidebar. Paper copies of the proposed ordinance are also available upon request at Pequot Lakes City Hall, 4638 Main Street, Pequot Lakes, MN 56472, by calling (218)568-5222, or via email at [cityhall@pequotlakes-mn.gov](mailto:cityhall@pequotlakes-mn.gov).

You are invited to comment or meet to discuss the proposed ordinance amendment with public health employee Karen Johnson ([karen.johnson@essentiahealth.org](mailto:karen.johnson@essentiahealth.org)) or myself ([eklang@pequotlakes-mn.gov](mailto:eklang@pequotlakes-mn.gov)) during a time that is most convenient for you. Please email comments or questions to either Karen or myself.

The proposed ordinance amendment will be presented to the City Council at their meeting held on Thursday, March 5, 2020 at 6:30 p.m. in the Pequot Lakes City Hall Council Chambers.

Best regards,

A handwritten signature in black ink that reads "Eric Klang". The signature is written in a cursive, flowing style.

Police Chief Eric Klang  
(218)568-8111

**ORDINANCE NUMBER 20-\_\_\_, SECOND SERIES  
AN ORDINANCE AMENDING CHAPTER 9, ARTICLE 5 OF THE CITY CODE  
REGARDING LICENSE AND BUSINESS REGULATIONS  
FOR TOBACCO REGULATIONS WITHIN THE CITY OF PEQUOT LAKES  
COUNTY OF CROW WING  
STATE OF MINNESOTA**

The City Council of the City of Pequot Lakes does ordain as follows:

The purpose of this ordinance amendment is to amend Chapter 9, Article 5 of the Pequot Lakes City Code regarding license and business regulations for tobacco regulations within the City of Pequot Lakes.

**Amendment:** Chapter 9, Article 5 shall be amended as follows.

**Section 9-5.1. PURPOSE AND INTENT.**

Because the city recognizes ~~the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 21 violates both state and federal laws; that many persons under the age of 18 years purchase or otherwise obtain, possess and use tobacco, tobacco products, and tobacco related devices, and the 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~~ 21 years and that those persons who reach the age of ~~18~~ 21 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 chapter shall be intended to regulate the sale of ~~commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products~~ possession and use of tobacco, tobacco products, and tobacco related devices for the purpose of enforcing and furthering existing laws to protect ~~minors~~ youth and young adults 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 in regard to preventing young people from starting to smoke as stated in Minnesota Statutes §144.391, as it may be amended from time to time.

**Section 9-5.2. DEFINITIONS**

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

1. Child-Resistant Packaging. 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.
2. Cigar. Any roll of tobacco that is wrapped in tobacco leaf or in any other

substance containing tobacco, with or without a tip or mouthpiece, which is not a cigarette as defined in Minn. Stat. § 297F.01, subd. 3, as may be amended from time to time.

3. Compliance Checks. 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 chapter. Compliance checks shall involve the use of persons under the age of 21 who purchase or attempt to purchase licensed products. Compliance checks may also be conducted by the city or other units of government for educational, research, and training purposes or for investigating or enforcing federal, state, or local laws and regulations relating to licensed products. ~~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 chapter. Compliance Checks shall involve the use of minors as authorized by this chapter. 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.~~

4. Electronic Delivery Device. Any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through the inhalation of aerosol or vapor from the product. Electronic delivery device includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems, or under any other product name or descriptor. 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 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 marketed and sold for such an approved purpose.

~~5. Individually Packaged. 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 definition shall not be considered individually packaged.~~

5. Licensed Products. The term that collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

6. Loosies. The common term used to refer to a single or individually packaged cigarette.

~~4. Minor. Any natural person who has not yet reached the age of 18 years.~~

7. Moveable Place of Business. Any form of business operated out of a kiosk, 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.

8. Nicotine or Lobelia Delivery Product. Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not a tobacco or an electronic delivery device as defined in this section. Nicotine or lobelia delivery product does 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 the approved purpose.

9. Retail Establishment. Any place of business where ~~licensed products tobacco, tobacco products or tobacco-related devices~~ are available for sale to the general public. The phrase shall include but not be limited to grocery stores, convenience stores, ~~tobacco product shops, gasoline service stations, bars, and restaurants.~~

10. Sale. Any transfer of goods for money, trade, barter or other consideration.

11. Self-Service Merchandising. Open displays of ~~tobacco, tobacco products or tobacco-related devices~~ ~~licensed products~~ in any manner where any person shall have access to the ~~tobacco, tobacco products, or tobacco-related devices,~~ ~~licensed 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 product, or tobacco-related device~~ ~~licensed products~~ between the customer and the licensee or employee. The phrase shall not include vending machines. ~~Self-service sales are interpreted as being any sale where there is not an actual physical exchange of the tobacco between the clerk and the customer.~~

12. Smoking. Inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. Smoking also includes carrying or using an activated electronic delivery device.

13. Tobacco or Tobacco Products. 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 flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweeping of tobacco; and other kinds and forms of tobacco. Tobacco 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. ~~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 a manner as to be suitable for chewing, sniffing or smoking.~~

14. Tobacco Related Devices. Any rolling papers, wraps, pipes, or other device intentionally designed or intended to be used with tobacco products. Tobacco-related device includes components of tobacco-related devices or tobacco products, which may be marketed or sold separately. Tobacco-related devices may or may not contain tobacco. ~~Any tobacco product as well as a pipe, rolling papers or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing or smoking of tobacco or tobacco products.~~

15. Vending Machine. Any mechanical, electric or electronic, or other type of device which dispenses licensed products ~~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 licensed product ~~tobacco, tobacco product or tobacco related device.~~

### Section 9-5.3. LICENSE

1. License required. No person shall sell or offer to sell any licensed products ~~tobacco, tobacco products, or tobacco related device~~ without first having obtained a license to do so from the City.

2. Application. An application for a license to sell licensed products ~~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 Council for action at its next regularly scheduled City Council meeting. If the City 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.

3. Action. 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.

4. Term. All licenses issued under this chapter shall fall under the licensing year of July 1 to June 30. License fees are not pro-rated if issued at any time other than July 1.

5. Revocation or Suspension. Any license issued under this chapter may be revoked or suspended following the procedures set forth in Section 9-5.11.

6. Transfers. All licenses issued under this chapter 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.~~

7. 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 chapter.

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

9. 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 30 days but no more than 60 days before the expiration of the current license.

10. Issuance as Privilege and Not a Right. The issuance of a license ~~issued~~ under this chapter 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.

11. Smoking Prohibited. Smoking, including smoking for the purpose of the sampling of licensed products, is prohibited within the indoor area of any retail establishment licensed under this chapter.

#### **Section 9-5.4. FEES.**

No license shall be issued under this chapter until the appropriate license fee shall be paid in full. The fee for a license under this chapter shall be established in the city's Ordinance Establishing Fees and Charges, as it may be amended by resolution from time to time.

#### **Section 9-5.5. BASIS FOR DENIAL OF LICENSE.**

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 **21 years of age** ~~the age of 18 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** ~~tobacco or tobacco products, or tobacco related devices~~.
3. The applicant has had a license to sell **licensed products suspended or** ~~tobacco, tobacco products, or tobacco related devices~~ revoked within the preceding 12 months of the date of application.
4. The applicant fails to provide any **of the** 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 regulation from holding a license.
6. 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.
7. 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. **The city will provide the license holder with notice of the revocation, along with information on the right to appeal.**

#### **Section 9-5.6. PROHIBITED ACTS SALES.**

~~It shall be a violation of this chapter for any person to sell or offer to sell any tobacco, tobacco product, or tobacco related device:~~

1. **In General. No person shall sell or offer to sell any licensed product:**  
~~To any person under the age of 18 years.~~
  - A. ~~By means of any type of vending machine, except as may otherwise be provided in this Chapter.~~
  - B. **By means of loosies.** ~~By means of self service methods whereby the customer does not need to make a verbal 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.~~
  - C. 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. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other tobacco products.
  - D. By any other means, to any other person, on in any other manner or form prohibited by federal, state or other local law, ordinance provision, or other regulation.
2. **Legal Age. No person shall sell any licensed product to any person under the age of 21.**
  - A. **Age Verification. Licensees must verify by means of government-issued photographic identification that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30.**

B. Signage. Notice of the legal sales age and verification requirement must be posted prominently and in plain view at all times at each location where licensed products are offered for sale.

3. Self-Service Sales. No person shall allow the sale of licensed products by any means whereby the customer may have access to those 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 licensed product between the licensee or his or her employee and the customer. All licensed 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. Any retailer selling licensed products at the time this chapter is adopted shall comply with this section within 90 days following the effective date of this chapter.

4. Liquid Packaging. No person shall 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.

#### **Section 9-5.7. VENDING MACHINES**

~~It shall be unlawful for any person licensed under this chapter to allow the sale of tobacco, tobacco products, or tobacco related devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment or the licensed establishment derives at least ninety (90) percent of its revenue from the sale of tobacco.~~

#### **Section 9-5.8. SELF-SERVICE SALES**

~~It shall be unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products, or tobacco related devices by any means where by the customer may have access to those 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 chapter is adopted shall comply with this section within 90 days following the effective date of this chapter.~~

#### **Section 9-5.7. RESPONSIBILITY**

All licensees under this chapter shall be responsible for the actions of their employees in regard to the sale, offer to sell, and furnishing of licensed products of tobacco, tobacco products, or tobacco related devices on the licensed premises. ~~and~~ The sale, offer to sell, or furnishing of any licensed product ~~an item~~ by an employee shall be considered an act of the licensee. ~~a sale by the license holder~~. Nothing in this section shall be construed as prohibiting the city from also subjecting the ~~employee clerk~~ to whatever civil penalties are appropriate under this chapter, state or federal law, or other applicable law or regulation.

## **Section 9-5.8. COMPLIANCE CHECKS AND INSPECTIONS**

All licensed premises shall be open to inspection by the city police or other authorized city official during regular business hours. From time to time, but at least ~~twice~~ ~~once~~ per year, the city shall conduct compliance checks. ~~In accordance with state law, the city will conduct at least one compliance check that involves the participation of two persons; one person between the ages of 15 and 17 and one 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 shall be supervised by city designated law enforcement officers or other designated city personnel.~~ ~~by engaging, with the written consent of their parents or guardians, minors over the age of 15 years but less than 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 those 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 or federal laws for educational, research, or training purposes, or required for the enforcement of a particular state or federal law.~~

## **Section 9-5.9. OTHER ~~PROHIBITED~~ ILLEGAL ACTS**

Unless otherwise provided, the following acts shall be a violation of this chapter:

- ~~1. Illegal Sales. It shall be a violation of this chapter for any person to sell or otherwise provide any tobacco, tobacco product, or tobacco related device to any minor.~~
  - ~~2. Illegal Possession. It shall be a violation of this chapter for any minor to have in his or her possession any tobacco, tobacco product, or tobacco related device. This division (B) shall not apply to minors lawfully involved in a compliance check.~~
  - ~~3. Illegal Use. It shall be a violation of this chapter for any minor to smoke, chew, snuff or otherwise use any tobacco, tobacco product, or tobacco related device.~~
1. Prohibited Furnishing or Illegal Procurement. It shall be a violation of this chapter for any person 21 years of age or older to purchase or otherwise obtain any licensed product on behalf of a person under the age of 21. It shall also be a violation for any person 21 years of age and older to coerce or attempt to coerce a person under the age of 21 to purchase or attempt to purchase any licensed product. It shall be a violation of this chapter 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 chapter for any person to purchase or otherwise obtain those 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 Section (4) shall not apply to minors lawfully involved in a compliance check.

2. Use of False Identification. It shall be a violation of this chapter for any **person** ~~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 **using the identification.**

#### **Section 9-5.10. EXCEPTIONS AND DEFENSES**

Nothing in this chapter shall prevent the **provision** ~~providing~~ of tobacco, tobacco products, or tobacco related devices to **any person** ~~a minor~~ as part of **an indigenous practice** or a lawfully recognized religious, spiritual, or cultural ceremony **or practice.** It shall be an affirmative defense to the violation of this chapter for a person to have reasonably relied on proof of age as described by state law.

#### **Section 9-5.11. VIOLATIONS AND PENALTY**

1. Violations.

- A. Notice. Upon issuance of a citation, a person accused of violating this chapter 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 Administrator 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. ~~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.~~
- B. Hearings. The City Administrator 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. ~~If a person accused of violating this chapter so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.~~
- C. Hearing Officer/Hearing Panel. The city official or panel designated by the City Council shall serve as the hearing officer.
- D. 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 chapter 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 appeal as described in this section. ~~If the hearing officer determines that a violation of this Chapter did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under Section 7-17.14 (2), 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, those 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 for the city in which the alleged violation occurred **within 10 business days of the date of the decision.**
- F. Misdemeanor Prosecution. Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this Chapter **by a person 21 years of age or older.**
- G. Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

2. Administrative Penalties.

- A. Licensees. Pursuant to Minnesota Statute § 461.12, as amended, any licensee found to have violated this chapter, or whose employee shall have violated this chapter, shall be charged an administrative fine of \$75 for a first violation of this chapter; \$200 for a second offense at the same licensed premises within a 24-month period; and \$250 for a third or subsequent offense at the same location within a 24-month period. **Upon the third violation, the license shall be suspended for not less than 30 consecutive days. Upon a fourth violation, the license will be revoked. In addition, after the third offense, the license shall be suspended for not less than seven days. No suspension or penalty may take effect until the licensee has received notice, served personally or by mail or the alleged violation and an opportunity for a hearing, before a person authorized by the licensing authority to conduct the hearing. A decision that a violation had occurred must be in writing.**
- B. Other Individuals. ~~Other~~ Individuals, other than **person under the age of 21 minors** regulated by division (2)(C) of this section, found to be in violation of this chapter shall be charged an administrative fine of \$50.
- C. Persons under the Age of 21 Minors. **Persons under the age of 21 who use a false identification to purchase licensed products 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 believes will be appropriate and effective. The penalty shall be established by the City Council upon the City Council's consultation with interested parties of the courts, educators, parents, and children to determine an appropriate penalty for person under the age of 21 in the city. This may also be established by the Ordinance Establishing Fees and Charges and amended from time to time by ordinance. ~~Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, or tobacco related devices, shall 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. The administrative fine or other penalty shall be established by the City Council upon the City Council's consultation with interested parties of the courts, educators, parents and children to determine an appropriate penalty for minors in the city. This administrative fine or other penalty may also be established from time to time by the Ordinance Establishing Fees and Charges and amended from time to time by ordinance.~~

- D. Statutory Penalties. If the administrative penalty authorized to be imposed by Minnesota Statute 461.12, as it may be amended from time to time, differ from that established in this section, then the higher penalty will prevail.  
~~Misdemeanor. Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this Chapter.~~

#### **Section 9-5.12. SEVERABILITY**

If any section or provision of this chapter 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.

#### **Section 9-5.13. EFFECTIVE DATE**

This chapter becomes effective on the date of its publication, or upon the publication of a summary of the chapter as provided by Minnesota Statute 412.191, subd. 4, as it may be amended from time to time, which meets the requirement of Minnesota Statute 331A.01, subd. 10, as it may be amended from time to time.

**Repeal:** This ordinance shall repeal all ordinances inconsistent herewith.

Passed by the Pequot Lakes City Council this 5<sup>th</sup> day of March, 2020.

ATTEST:

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James Tayloe  
Mayor

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Nancy Malecha  
City Administrator