

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 4902

AN ORDINANCE AMENDING SECTION 10-0103 OF
ARTICLE 10-01 OF CHAPTER 10 OF THE FARGO
MUNICIPAL CODE RELATING TO RESTRAINT OF MINORS
AND SECTION 10-1001 OF ARTICLE 10-10 OF CHAPTER 10
OF THE FARGO MUNICIPAL CODE RELATING
TO TOBACCO VENDING MACHINES

WHEREAS, the electorate of the City of Fargo has adopted a home rule charter in accordance with Chapter 40-05.1 of the North Dakota Century Code; and

WHEREAS, Section 40-05.1-06 of the North Dakota Century Code provides that the City shall have the right to implement home rule powers by ordinance; and

WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that said home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict therewith and shall be liberally construed for such purpose; and

WHEREAS, the Board of City Commissioners deems it necessary and appropriate to implement such authority by the adoption of this ordinance;

NOW, THEREFORE,

Be it Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. Amendment.

Section 10-0103 of Article 10-01 of Chapter 10 of the Fargo Municipal Code is hereby amended to read as follows:

10-0103. Sale of tobacco to minors and use and possession by minors prohibited.—

A. For purposes of this section the definitions in 10-1001 shall apply.

AB. No person shall sell or furnish to a minor, or procure for a minor, cigarettes, including clove cigarettes, cigarette papers, cigars, e-cigarettes, snuff, or tobacco products in any other form in which it may be utilized for smoking or chewing. As used in this section, “sell” includes dispensing from a vending machine under the control of the vendor. It shall be a defense to this subsection if the person furnishing tobacco to a minor did so as part of a cultural or religious practice; provided, however, that in no event shall any

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 4902

1 sale or other exchange for value be lawful. A person in violation of this
2 subsection shall be guilty of an infraction.

3 BC. No person under the age of 18 shall sell, possess, purchase, attempt to
4 purchase, smoke, or use cigarettes, including clove cigarettes, cigars,
5 cigarette papers, e-cigarettes, snuff, or tobacco products in any other form in
6 which it may be utilized for smoking or chewing.

7 1. Subsection (B) shall not apply to persons under the age of 18
8 who purchase or attempt to purchase said tobacco products
9 listed in this subsection while under the direct supervision of
10 the police department, the city health department, or the city
11 attorney's office, for training, education, research, or
12 enforcement purposes.

13 2. Subsection (B) shall further not apply to an employee less
14 than 18 years of age employed by a licensed tobacco dealer
15 or distributor where said employee under the age of 18 years
16 handles tobacco products listed in this subsection as part of
17 that the employee's employment.

18 3. It shall be a defense to subsection (B), above, if the minor's
19 possession or use of tobacco relates to a cultural or religious
20 practice; including, without limitation, the use or possession
21 of tobacco during any religious or cultural ceremony.

22 4. Non-criminal violation. Minors fourteen (14) years of age or
23 older found to have violated subsection (B), above, must pay
a fee of \$25 and must attend and complete within sixty (60)
days of the date of offense a tobacco education program
approved by the Fargo Municipal Court. Minors fourteen
(14) years of age or older found to have violated subsection
(B), above, three times within any twelve-consecutive-
month period may be ordered by the court to attend a
tobacco cessation program instead of a tobacco education
program.

1. Payment procedure. Any individual who has been cited for
a violation of subsection (B) must post bond in the amount
stated on the citation within fourteen (14) days of the date of
the citation and must also, within said fourteen (14) day
period, notify the Fargo Municipal Court whether he or she
requests a hearing before one of the judges of the Fargo
Municipal Court. At such hearing, the individual who has
been cited for a violation of subsection (B) may make a

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 4902

1 statement in explanation of that individual's action and the
2 judge may waive, reduce, or suspend the fee or bond, or
3 both. If the individual cited elects to forfeit the bond or fails
4 to appear before the Fargo Municipal Court at a time
5 scheduled for a hearing, that individual has admitted the
6 violation and has waived the right to a hearing on the issue
7 of commission of the violation. The bond required to secure
8 appearance before the court is the same as the fee schedule
9 set forth in subparagraph 4, above. This section does not
10 allow a citing officer to receive the fee or bond.

11 (a) If an individual cited for a violation of subsection (B)
12 requests a hearing on the issue of the commission of
13 the violation cited, the clerk of court will schedule a
14 hearing date no later than 90 days after the citation
15 was issued. If said individual has not already done
16 so, at the time of a request for a hearing on the issue
17 on commission of the violation, the individual cited
18 shall deposit with the court an appearance bond equal
19 to the fee for the violation cited.

20 (b) The failure to post bond or to pay an assessed fee, or
21 attend a tobacco education or tobacco cessation class
22 when required to do so is punishable as contempt of
23 court. Such person adjudged guilty of contempt for
failure to pay a fee or fine or to attend a tobacco
education class or tobacco cessation class when
required to do so may be sentenced by the court to a
sanction or order designed to ensure compliance with
the payment of the fee or fine or attendance at a
tobacco education class or tobacco cessation class, to
an alternative sentence or a sanction including
community service. A minor may not be imprisoned
for the contempt.

6. Burden of proof. The prosecution must prove the
commission of a cited violation under subsection (B), above,
by a preponderance of the evidence.

7. Notice to parent or legal guardian. A law enforcement
officer that cites a minor for violation of this section shall
mail a notice of the violation to the parent or legal guardian
of the minor within ten (10) days of the citation.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 4902

- 1
2
3
4
5
6
8. Penalty for contempt. A person adjudged guilty of contempt for failure to pay a fee or fine or to attend a tobacco education class or tobacco cessation class when required to do so may be sentenced by the court to a sanction or order designed to ensure compliance with the payment of the fee or fine or attendance at a tobacco cessation class to an alternative sentence or sanction including community service and may require the person to pay an additional fee or fine of up to \$500.

7
8

Section 2. Amendment.

9
10
11
12
13

Section 10-1001 of Article 10-10 of Chapter 10 of the Fargo Municipal Code is hereby amended to read as follows:

14
15
16
17
18
19
20
21
22
23

10-1001. Definitions.--

1. "E-cigarette, electronic cigarette or electronic smoking devices" shall all mean any electronic oral device, such as one composed of a heating element and battery or electronic circuit, or both, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, and e-pipe or under any other product, name, or descriptor and also includes any cartridge or other component of the device.
2. "Minor" shall mean any person who has not reached the age of 18 years.
3. "Person" shall mean any individual, partnership, corporation or other legal entity.
4. "Tobacco products" shall mean, but is not limited to, cigarettes, cigars, smokeless tobacco, tobacco snuff, chewing 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 cigarette papers any product that is made from or derived from tobacco, which contains nicotine or a similar substance, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, snus, or an electronic smoking device. Tobacco product also includes pipes and rolling papers, but does not include any product specifically approved by the U.S. Food and Drug Administration for legal sale as a tobacco cessation product and is being marketed and sold solely for that approved purpose.
5. "Vending machine" shall mean any kind of device or mechanical machine which,

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 4902

1 upon the insertion of a coin or coins, tokens or other objects, will release tobacco
2 products in packages or otherwise.

3 Section 3. Effective Date.

4 This ordinance shall be in full force and effect from and after its passage and approval.

5 
6 Dennis R. Walaker, Mayor

7 Attest:

8 
9 Steven Sprague, City Auditor

10 First Reading: 12-23-2013
11 Second Reading: 01-06-2014
12 Final Passage: 01-06-2014
13
14
15
16
17
18
19
20
21
22
23