



MINNESOTA CITY RETAIL TOBACCO LICENSING ORDINANCE



Through licensing and related regulations, Minnesota cities have the opportunity to address the sale of tobacco and related devices and products in the retail environment.

This ordinance includes all of the minimum sales restrictions required by Minnesota law and a number of additional provisions a city may adopt. A city wishing to enact this ordinance should review it with the city attorney to determine what is best suited for the city's circumstances. It can be modified by adding or eliminating content that concern activities it does or does not seek to regulate. Because provisions within this ordinance are controlled by statute and rule, the city attorney should review any modifications to ensure they conform to state and federal law. And because it establishes rights and





responsibilities of both the city and the license applicants and holders, the city attorney should review the entire ordinance before it is adopted.

This ordinance is drafted in the form prescribed by state law for statutory cities. Statutory cities must publish their ordinances — or a summary thereof — in the city’s official newspaper before they become effective. Home rule charter cities may have to follow the formatting and/or other procedural requirements found in their city’s charter. Charter cities should consult their charter and city attorney to ensure that they comply with all charter requirements. All cities must provide copies of their ordinances to the county law library or its designated depository pursuant to Minn. Stat. § 415.021.

This ordinance may affect existing license holders. Pursuant to Minn. Stat. § 461.19, a city is required to give retailers notice that it is considering adoption or substantial amendment of a retail tobacco licensing ordinance. The city must take reasonable steps to send notice by mail at least 30 days prior to the meeting to the last known address of each licensee or person required to hold a license. The notice must state the time, place, and date of the meeting and the subject matter of the proposed ordinance. A copy of the proposed ordinance may be mailed to all license holders to inform them of its contents and provide them an opportunity to make their views known.

This retail tobacco licensing ordinance was prepared by the Public Health Law Center at Mitchell Hamline School of Law, St. Paul, Minnesota.

The Public Health Law Center provides information and legal technical assistance on issues related to public health. The Center does not provide legal representation or advice. This document should not be considered legal advice.



ORDINANCE NO. [_____]

**AN ORDINANCE REGULATING THE SALE OF TOBACCO
AND RELATED DEVICES AND PRODUCTS WITHIN
THE CITY OF [_____], MINNESOTA**

**THE CITY COUNCIL OF THE CITY OF [_____]
DOES ORDAIN:**

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Section 1. Purpose and Intent.

Because the city recognizes that the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 18 violates 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 almost no one starts smoking after age 25; and because tobacco use 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 is intended to regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect minors and young adults against the serious effects associated with use and initiation, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in Minn. Stat. § 144.391, as it may be amended from time to time.

In making these findings, the City Council accepts the conclusions and recommendations of: the U.S. Surgeon General reports, "E-cigarette Use Among Youth and Young Adults" (2016), "The Health Consequences of Smoking—50 Years of Progress" (2014) and "Preventing Tobacco Use Among Youth and Young Adults" (2012); the Centers for Disease Control and Prevention in their studies, "Tobacco Use Among Middle and High School Students — United States, 2011-2015," and "Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997"; and of the following scholars in these scientific journals: Xin Xu et al., Annual Healthcare Spending Attributable to Cigarette Smoking: An Update, *Am. J. Prev. Med.* 48(3): 326-33 (Mar. 2015); Giovino GA, "Epidemiology of Tobacco Use in the United States," *Oncogene* (2002) 21, 7326-40; Khuder SA, et al., "Age at Smoking Onset and its Effect on Smoking Cessation," *Addictive Behavior* 24(5):673-7, September-October 1999; D'Avanzo B, et al., "Age at Starting Smoking and Number of Cigarettes Smoked," *Annals of Epidemiology* 4(6):455-59, November 1994; Chen, J & Millar, WJ, "Age of Smoking Initiation: Implications for Quitting," *Health Reports* 9(4):39-46, Spring 1998; Everett SA, et al., "Initiation of Cigarette Smoking and Subsequent Smoking Behavior Among U.S. High School Students," *Preventive Medicine*, 29(5):327-33, November 1999, copies of which are adopted by reference.

Section 2. Definitions.

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



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.

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.

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 ordinance. COMPLIANCE CHECKS 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.

ELECTRONIC DELIVERY DEVICE. Any product containing or delivering nicotine, lobelia, or any other substance 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 United States 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.

FLAVORED PRODUCT. Any licensed product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the product, including, but not limited to, any taste or smell relating to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, fruit, or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a licensed product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such products, that a product has or produces a taste or smell other than tobacco will constitute presumptive evidence that the product is a flavored product.

IMITATION TOBACCO PRODUCT. Any edible non-tobacco product designed to resemble a tobacco product, or any non-edible tobacco product designed to resemble a tobacco product and intended to be used by children as a toy. IMITATION TOBACCO PRODUCT includes, but is not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling chew tobacco, and shredded beef jerky in containers resembling tobacco snuff tins. IMITATION TOBACCO PRODUCT does not include electronic delivery devices or nicotine or lobelia delivery products.

INDOOR AREA. All space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent. A standard window screen (0.011 gauge with an 18 by 16 mesh count) is not considered a wall.

LICENSED PRODUCTS. The term that collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

LOOSIES. The common term used to refer to single or individually packaged cigars or cigarettes, or any other licensed product that has been removed from its intended retail packaging and offered for sale. LOOSIES does not include individual cigars with a retail price, after any discounts are applied and before any sales taxes are imposed, of at least [\$4.00] per cigar.

MINOR. Any natural person who has not yet reached the age of 18 years.

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.

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 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 United States Food and Drug Administration for tobacco use cessation or for other medical purposes, and is being marketed and sold solely for that approved purpose.

PHARMACY. A place of business at which prescription drugs are prepared, compounded, or dispensed by or under the supervision of a pharmacist and from which related clinical pharmacy services are delivered.



RETAIL ESTABLISHMENT. Any place of business where licensed products are available for sale to the general public. The phrase includes but is not limited to grocery stores, convenience stores, gasoline service stations, bars, and restaurants.

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

SELF-SERVICE DISPLAY. The open display of licensed products in any manner where any person has access to the products without the assistance or intervention of the licensee or the licensee's employee.

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

TOBACCO. 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 sweepings of tobacco; and other kinds and forms of tobacco. TOBACCO does not include any product that has been approved 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, and is being marketed and sold solely for such an approved purpose.

TOBACCO-RELATED DEVICE. Any pipe, rolling papers, or other device intentionally designed or intended to be used with tobacco products. TOBACCO-RELATED DEVICE includes components of tobacco-related devices which may be marketed or sold separately.

VENDING MACHINE. Any mechanical, electric or electronic, or other type of device that dispenses licensed products upon the insertion of money, tokens or other form of payment directly into the machine by the person seeking to purchase the licensed product.

YOUTH-ORIENTED FACILITY. Any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or that primarily sells, rents, or offers services or products that are consumed or used primarily by persons under the age of 21.

Section 3. License.

- (A) **License required.** No person shall sell or offer to sell any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product without first having obtained a license to do so from the city.
- (B) **Application.** An application for a license to sell must be made on a form provided by the city. The application must 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 will forward the application to the City Council for action at its next regularly scheduled City Council meeting. If the City Clerk determines that an application is incomplete, it will be returned to the applicant with notice of the information necessary to make the application complete.
- (C) **Action.** The City Council may either approve or deny the license, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary. If the City Council approves the license, the City Clerk will issue the license to the applicant. If the City Council denies the license, notice of the denial will be given to the applicant along with notice of the applicant's right to appeal the decision.
- (D) **Term.** All licenses issued are valid for one calendar year from the date of issue.
- (E) **Revocation or suspension.** Any license issued may be revoked or suspended following the procedure provided in Section 11.
- (F) **Transfers.** All licenses issued are valid only on the premises for which the license was issued and only for the person to whom the license was issued. The transfer of any license to another location or person is prohibited.
- (G) **Moveable place of business.** No license will be issued to a moveable place of business. Only fixed location businesses are eligible to be licensed.
- (H) **Display.** All licenses must be posted and displayed in plain view of the general public on the licensed premises.
- (I) **Renewals.** The renewal of a license issued under this ordinance will be handled in the same manner as the original application. The request for a renewal must be made at least 30 days but no more than 60 days before the expiration of the current license.

- (J) **Issuance as privilege and not a right.** The issuance of a license is a privilege and does not entitle the holder to an automatic renewal of the license.
- (K) **Maximum number of licenses.** The maximum number of licenses issued by the city at any time is limited to [____]. When the maximum number of licenses has been issued, persons may be placed on a waiting list and eligible to apply on a first-come, first-serve basis as licenses are not renewed or are revoked. New applicants who purchased a business location holding a current city license are entitled to first priority.
- (L) **Minimum clerk age.** Individuals employed by a person licensed under this ordinance must be at least [18 or 21] years of age to sell licensed products.
- (M) **Proximity to youth-oriented facilities.** No license will be granted to any person for a location that is within [1,000] feet of a school, playground, house of worship, or other youth-oriented facility, as measured by the shortest line from the property line of the space to be occupied by the proposed licensee and the nearest property line of the school, playground, house of worship, or other youth-oriented facility. This restriction does not apply to an applicant who has been licensed to sell such products in that location for at least one year before the date this section was enacted into law.
- (N) **Proximity to other retailers.** No license will be granted to any person for a location that is within [2,000] feet of any other retail establishment holding a license to sell licensed products, as measured by the shortest line from the property line of the space to be occupied by the proposed licensee and the nearest property line of the existing licensee. This restriction does not apply to an applicant who has been licensed to sell such products in that location for at least one year before the date this section was enacted into law.
- (O) **Pharmacies ineligible for license.** No license will be granted to any pharmacy, including any retail establishment that operates or contains an on-site pharmacy. Any pharmacy or retail establishment that operates or contains an on-site pharmacy that has a license to sell licensed products will not be eligible for renewal.
- (P) **Smoking prohibited.** Smoking is prohibited within the indoor area of any retail establishment licensed under this ordinance. Smoking for the purpose of sampling licensed products is prohibited.
- (Q) **Samples prohibited.** No person shall distribute samples of any licensed product free of charge or at nominal cost.

- (R) **Instructional program.** All licensees must ensure that all employees go through a training program on the legal requirements relating to the sale of licensed products and the possible consequences for violations. Any training program must be pre-approved by the city. Licensees must maintain and provide to the city documentation demonstrating compliance at the time of renewal, or whenever requested during the license term.

Section 4. Fees.

No license will be issued under this ordinance until the appropriate license fees are paid in full. The fees will be established by the city's fee schedule and may be amended from time to time.

Section 5. Basis for Denial of License.

- (A) Grounds for denying the issuance or renewal of a license include but are not limited to the following:
- (1) The applicant is under 21 years of age.
 - (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.
 - (3) The applicant has had a license to sell licensed products suspended or revoked within the preceding 12 months of the date of application.
 - (4) The applicant fails to provide any 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 other regulation from holding a license.
- (B) 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.
- (C) If a license is mistakenly issued or renewed to a person, it will be revoked upon the discovery that the person was ineligible for the license under this ordinance. Notice of the revocation will be given to the entity along with information on the right to appeal.

Section 6. Prohibited Acts.

- (A) **In general.** No person shall sell or offer to sell any licensed product:
- (1) By means of any type of vending machine.

- (2) By means of loosies as defined in Section 2.
 - (3) 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 products subject to this ordinance.
 - (4) 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.
- (B) **Legal age.** No person shall sell any licensed product to any person under the age of 21.
- (1) **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. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.
 - (2) **Signage.** Notice of the legal sales age and age verification requirement must be posted at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the city, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.
- (C) **Self-service sales.** No person shall allow the sale of licensed products by any self-service displays whereby the customer may have access to those items without having to request the item from the licensee or licensee's employee and whereby there is not a physical exchange of the licensed product between the licensee or licensee's employee and the customer. All licensed products must be stored behind the sales 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 ordinance is adopted must comply with this section within 90 days of the effective date of this ordinance.
- (D) **Flavored products.** No person shall sell or offer for sale any flavored products. This prohibition does not apply to retail establishments that:
- (1) Prohibit persons under 21 from entering at all times; and
 - (2) Derive at least 90 percent of their revenues from the sale of licensed products.

Any retail establishment that sells flavored products must provide upon request financial records that document annual sales.

- (E) **Cigars.** No person shall sell or offer for sale any cigar that is not within its intended retail packaging containing a minimum of [five] cigars and for a sales price, after any discounts are applied and before sales taxes are imposed, of less than [\$12.50] per package. This restriction does not prohibit the sale of a single cigar with a sales price, after any discounts are applied and before sales taxes are imposed, of at least [\$4.00].
- (F) **Imitation tobacco products.** No person shall sell, offer for sale, or otherwise distribute any imitation tobacco products within the city.
- (G) **Liquid packaging.** No person shall sell or offer for sale 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. Upon request, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

Section 7. Responsibility.

All licensees are responsible for the actions of their employees in regard to the sale of licensed products on the licensed premises, and the sale of an item by an employee shall be considered a sale by the licensee. Nothing in this section shall be construed as prohibiting the city from also subjecting the employee to whatever penalties are appropriate under this ordinance, state or federal law, or other applicable law or regulation.

Section 8. Compliance Checks and Inspections.

All licensed premises must be open to inspection by law enforcement or other authorized city official during regular business hours. From time to time, but at least [twice] per year, the city will conduct compliance checks by engaging with persons over the age of 15 but less than 21 years to enter licensed premises to attempt to purchase licensed products. Prior written consent is required for any minor who participates in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel and will not be guilty of illegal possession or illegal procurement when those items are obtained as a part of the compliance check.

Section 9. Other Illegal Acts.

Unless otherwise provided, the following acts are a violation of this ordinance:

- (A) **Illegal possession.** It is a violation of this ordinance for any minor to have in his or her possession any licensed product.

- (B) **Illegal use.** It is a violation of this ordinance for any minor to smoke, chew, sniff or otherwise use any licensed product.
- (C) **Illegal procurement.** It is a violation of this ordinance for any minor to purchase or attempt to purchase or otherwise obtain any licensed product, and it shall be a violation of this ordinance for any person to purchase or otherwise obtain those items on behalf of a minor. It is also a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any licensed product.
- (D) **Use of false identification.** It is a violation of this ordinance for any person 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.

Section 10. Exceptions And Defenses.

Nothing in this ordinance prevents the providing of tobacco or tobacco-related devices to any person as part of a lawfully recognized religious, spiritual, or cultural ceremony. It is an affirmative defense to a violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

Section 11. Violations and Penalties.

(A) Violations.

- (1) **Notice.** A person violating this ordinance may be issued, either personally or by mail, a citation that sets forth the alleged violation and that informs the alleged violator of his or her right to a hearing on the matter and how and where a hearing may be requested, including a contact address and phone number.

(2) Hearings.

- (a) Upon issuance of a citation, a person accused of violating this ordinance 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 Clerk or other designated city officer. Failure to request a hearing within 10 business days of the issuance of the citation will terminate the person's right to a hearing.
- (b) The City Clerk 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.

- (3) **Hearing Officer.** The City Council will designate a hearing officer. The hearing officer will be an impartial employee of the city or an impartial person retained by the city to conduct the hearing.
- (4) **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 ordinance 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. Likewise, 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 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.
- (5) **Costs.** If the citation is upheld by the hearing officer, the city's actual expenses in holding the hearing up to a maximum of [\$1,000] must be paid by the person requesting the hearing.
- (6) **Appeals.** Appeals of any decision made by the hearing officer must be filed in [_____] County district court within 10 business days.
- (7) **Continued violation.** Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(B) **Administrative penalties.**

- (1) **Licensees.** Any licensee found to have violated this ordinance, or whose employee violated this ordinance, will be charged an administrative fine of [\$200] for a first violation; [\$500] for a second offense at the same licensed premises within a 24-month period; and [\$750] for a third or subsequent offense at the same location within a 24-month period. Upon the third violation, the license will also be suspended for not less than [30] consecutive days. Upon a fourth violation, the license will be revoked.
- (2) **Other individuals.** Other individuals, other than minors regulated by division (B) (3) of this section, found to be in violation of this ordinance will be charged an administrative fine of [\$50].
- (3) **Minors.** Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase licensed products 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 City Council will consult with the courts, educators, parents, children and other interested parties to determine an appropriate penalty for minors in the city. The penalty may be established by ordinance and amended from time to time.

- (4) **Statutory penalties.** If the administrative penalties authorized to be imposed by Minn. Stat. § 461.12, as it may be amended from time to time, differ from those established in this section, then the higher penalties will prevail.

- (C) **Misdemeanor prosecution.** Nothing in this section prohibits the city from seeking prosecution as a misdemeanor for any alleged violation of this ordinance.

Section 12. Severability.

If any section or provision of this ordinance 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 13. Effective Date.

This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.