

CITY OF BLAINE

ORDINANCE NO. 00-1856

AN ORDINANCE ADOPTING ARTICLE II  
IGNITION DEVICES  
(CASE FILE NO. 00-47)

THE CITY OF BLAINE DOES ORDAIN: (Added portions are underscored and deleted portions are shown in brackets with overstrike.)

ARTICLE II IGNITION DEVICES

Sec. 9-15. Definitions.

Ignition device, for the purpose of this Section shall be defined as:

- a. Matches
- b. Lighters
- c. Any other materials when used for purposes of ignition.

Limiting Access for the purpose of this Section shall be defined as:

placing ignition devices behind sales counters out of reach of children or for items used for cooking or work placing on the top shelf of the display rack.

Sec. 9-16. Prohibitions.

- a. No minor may possess any ignition device, unless under the direct supervision of, or with the direct permission of, a parent or legal guardian.
- b. The owner or operators of any place of business must limit access of ignition devices to minors at the place of business.

Sec. 9-17. Confiscation.

Any ignition device possessed by a minor may be confiscated by any peace officer, fire chief or authorized designee of the fire chief. Once confiscated, the ignition device shall become

property of the confiscating authority and shall be processed accordingly as evidence in the commission of a crime or made inoperable and disposed of properly.

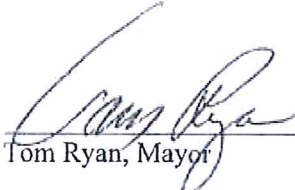
**Sec. 9-18. Penalties.**

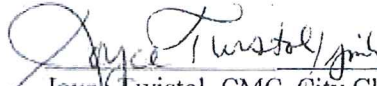
- a. Any persons, firm or corporation which violates any of the provisions of this Ordinance shall be guilty of a misdemeanor.
- b. In addition to any other penalties provided for in this Code, any persons found guilty of violating the Ordinance may be required to participate in an educational program when appropriate, and include as part of the penalty therein that such person pay the cost of such educational program.

**INTRODUCED AND READ** in full this 18<sup>th</sup> day of May, 2000.

**PASSED** by the Blaine City Council this 1<sup>st</sup> day of June, 2000.

ATTEST:

  
\_\_\_\_\_  
Tom Ryan, Mayor

  
\_\_\_\_\_  
Joyce Twistol, CMC, City Clerk  
Council Action No. 00-280  
Uploading:\hpc\2000\0047\ignition devices by minors.doc

Dated: 6/1/00

Published: 6/9/00 Blaine Spring Lake Park Life



# CITY OF BLAINE

TO: Mayor and City Council

REVIEWED: *[Signature]*

FROM: Ron Henrickson, Director of Community Development *[Signature]*

DATE: June 1, 2000

NO.: 12.2

ITEM: **ADMINISTRATION:** Second Reading – Ordinance No. 00-1856, Adopting Article II, Ignition Devices, City of Blaine (Case File No. 00-47/KAG)

The City is proposing a code amendment requiring businesses to limit access of minors to ignition devices and prohibiting minors from possessing ignition devices.

**SCHEDULE OF ACTIONS:**

- City Council (1<sup>st</sup> Reading) ..... 05/18/00
- City Council (2<sup>nd</sup> Reading)..... 06/01/00

**BACKGROUND:**

Juveniles and juvenile fire play account for over half of all working structure fires on a national level and is closely matched here in Minnesota and the City of Blaine. Juveniles are also responsible for the vast majority of wildland fires that we experience every year with over 74 percent of 1999 wildland fires being juvenile related. We continue to experience difficulty in two areas: access of ignition devices by young children; and the inability to include children in the legal process because of their age or when fire play clearly occurred but no damage was done. The ultimate goal of including young children in the legal process is to enroll them in an educational program to eliminate future juvenile firesetting problems.

Two issues were raised at the May 18, 2000 City Council meeting. We have modified the language slightly to address the concern relating to cooking related ignition devices. The modification would require retailers to limit access which could include placing behind the counter or elevating to the upper shelf. We have also researched MN statute 609.684 which prohibits the sale of toxic substances to children. This includes butane lighters. This has not been modified and still prohibits the sale of butane lighters to children. One other call was received from the operator of the Holiday gas station who indicated they were fully supportive of the proposed ordinance.

An informational meeting was scheduled on June 1, 2000 to explain the ordinance to retailers.

Ordinance No. 00-1839 was introduced for first reading at the May 18, 2000, and is being presented at this time for adoption.

**RECOMMENDED COUNCIL ACTION:**

By motion, approve Ordinance No. 00-1856.

**ATTACHMENTS:**

Ordinance No. 00-1856



June 28, 2017

Reply to St. Paul

**VIA EMAIL TRANSMISSION**

Blaine City Council  
City of Blaine  
10801 Town Square Drive NE  
Blaine, MN 55449

Re: The Lighter Association, Inc.  
Blaine City Ordinance  
Our File No. 71077

Dear Councilmembers:

I am writing on behalf of my client, The Lighter Association, Inc., to express the Association's concern over Sections 38-61 to 38-64 of Blaine's City Code (hereinafter referred to as the "Ordinance"). The Lighter Association, Inc. is a trade association formed by the U.S. lighter industry in 1986 and represents the industry before Federal, State and local regulatory bodies and the U.S. Congress.

The text of Ordinance Section 38-61 to 38-64 (passed June 1, 2000) prohibits minors from possessing ignition devices (matches, lighters, or other materials used for ignition) and prohibits businesses from selling/making ignition devices accessible to minors. Violation of the Ordinance constitutes a criminal, misdemeanor offense. In the last several months, various retailers in Blaine have been issued correction notices for violating the above Ordinance. However, we believe the Ordinance and any citations or correction notices issued under the Ordinance are invalid. For the reasons stated below, we urge that the Ordinance be repealed in order to comport with local, State, and Federal law.

Validity

Blaine's City Council passed the above Ordinance on June 1, 2000. (See attached as Exh. A). However, it appears that the version of the Ordinance that was actually passed by the City Council in June of 2000 was not published for over seventeen years. Instead, the City published an erroneous version of the Ordinance, the text of which was never adopted by the Blaine City Council or signed into law by the Mayor. (See attached as Exh. B). Our firm brought this issue to the attention of Blaine's City Clerk, Cathy Sorensen, and the correct version of the Ordinance was subsequently published in the local newspaper on May 19, 2017. (See attached as Exh. C). It is unclear whether the City Council voted in an open

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NORTH DAKOTA OFFICE	BOX 1776 220 N. 4TH STREET	BISMARCK, ND 58502 1776	F 701 751 6300	F 651 223 5199
WISCONSIN OFFICE	1810 CREST VIEW DRIVE, SUITE 2B	HUDSON, WI 54016 9336	F 715 246 3910	F 651 223 5199



meeting to resurrect the nearly twenty year old Ordinance or whether any public comment was invited before the recent publication.

Blaine's City Charter establishes that an ordinance does not become effective until thirty days after it is published in the local newspaper. (Blaine City Charter, Sections 3.08 & 3.09). As a result, any previous correction notices or citations issued under the Ordinance are invalid and any enforcement of such correction notices or citations would constitute an unconstitutional deprivation of due process. Accordingly, we request that the City cease enforcement of the Ordinance and inform all prior persons or entities which received correction notices or citations that such correction notices and citations were void and are withdrawn.

In addition, mere publication of the Ordinance seventeen years after its passage is likely insufficient to make the Ordinance valid. The Minnesota Supreme Court has held that "'an invalid ordinance cannot be vitalized...absent a clear intent to do so.'" *Pilgrim v. City of Winona*, 256 N.W.2d 266, 270-71 (Minn. 1977) " 'Before an act of the legislative body can have a validating effect [there] must be a proceeding equivalent to the original authority and the ordinance must identify in some way the void ordinance and clearly indicate an intent to validate the ordinance.'" *Id.* at 271 (Minn. 1977)(internal citations omitted). Thus, absent the passage of a new ordinance by the City Council, the validity of Blaine's current Ordinance remains in question.

#### Constitutionality

We also have concerns regarding the constitutionality of Blaine's Ordinance. "[T]he [constitutional] right to due process includes the right to not be convicted and punished based on an unconstitutionally vague statute" or ordinance. *State v. Phipps*, 820 N.W.2d 282, 285 (Minn.App.2012). This "void-for-vagueness doctrine requires that a penal statute [or ordinance]" like the misdemeanor established by Blaine "define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited" and that the conduct be defined "in a manner that does not encourage arbitrary and discriminatory enforcement." *State v. Bussmann*, 741 N.W.2d 79, 83 (Minn. 2007).

In this regard, Blaine's Ordinance is unconstitutionally ambiguous because it fails to distinguish actions which constitute compliance from actions which constitute a violation. For example, Blaine's Ordinance requires businesses to limit access of ignition devices to minors and provides suggestions for limiting access, like placing ignition devices on the "top shelf," but it fails to state what height is sufficient to limit access – 4 feet, 5 feet, 6 feet, etc. In this way, the Ordinance is ambiguous and encourages arbitrary and discriminatory enforcement. Because of this ambiguity, its enforcement is dependent upon the interpretation of the individual issuing correction notices or citations on any given day, rather than well-defined prohibitions. As a result, the current text of Blaine's Ordinance is unconstitutionally ambiguous and would remain so even if repassed by the City Council.

The recent correction notices issued to Home Depot and Walmart further illustrate the ambiguity of the Ordinance. The correction notices mandated the following: "Lighters must

be enclosed in a locking case or behind a staffed counter." (See attached as Exhibits D and E respectively, Correction Notice for Case No. F17-0542 and Correction Notice for Case No. F17-0564). The requirements imposed by these correction notices are found nowhere in the Ordinance that was passed in June of 2000 or in the Ordinance that was erroneously enforced for the last seventeen years. As a consequence, the City's effort to restrict access to ignition devices is vague and cannot withstand constitutional scrutiny.

#### State Law and Federal Law

Blaine's Ordinance is also inconsistent with State and Federal law. The Staff Report from the June 1, 2000 City Council meeting at which the Ordinance was adopted indicates that the City Council was adopting Blaine's Ordinance to be consistent with Minnesota state law. (See attached as Exh. F). That Staff Report states that supplementary research was conducted on Minnesota Statute Section 609.684 which contained provisions prohibiting the sale of toxic substances, including butane lighters, to minors. The relevant provisions stated:

#### Subd. 2 SALE TO MINORS

- (a) A person is guilty of a misdemeanor who sells a toxic substance to a person under the age of 18.

(See 1992 Minn. Sess. Law Serv. Ch. 485, Sec. 2, Subd. 2(a)).

However, the provisions of Minn. Stat. §609.684, subd. 2 on which the Staff Report apparently relied were repealed in 1997, three years before Blaine's Ordinance was adopted. Although Section 609.684 still defines butane and butane lighters as toxic substances (See Section 609.864, Subd. 1; paragraph (b)), the sale of butane lighters to minors is no longer prohibited by Minnesota state law. (Repealed by Laws 1997, c. 239, art. 3, § 25, par. (a); Laws 1997, 1st Sp., c. 5, § 5).

In addition, subdivision 4 of Minn. Stat. 609.684 originally required businesses to post a notice that the sale of butane and butane lighters to minors was illegal. However, the legislature deleted this language in 1997, as indicated below:

Subd. 4. [NOTICE REQUIRED.] (a) A business establishment that offers for sale at retail any toxic substance must display a conspicuous sign that contains the following, or substantially similar, language:

#### "NOTICE

~~It is unlawful for a person to sell glue, cement, or aerosol paint containing intoxicating substances, to a person under 18 years of age, except as provided by law. This offense is a~~

~~misdemeanor.~~ It is also a misdemeanor for a person to use or possess glue, cement, aerosol paint, with the intent of inducing intoxication, excitement, or stupefaction of the central nervous system. This use can be harmful or fatal."

(b) A business establishment may omit from the required notice references to any toxic substance that is not offered for sale by that business establishment.

(c) A business establishment that does not sell any toxic substance listed in subdivision 1 **other than butane or butane lighters shall post a sign stating that it is illegal to sell butane or butane lighters to anyone under the age of 18.** ~~This sign shall fulfill the requirements under this subdivision is not required to post a notice under paragraph (a).~~

(Repealed by Laws 1997, c. 239, art. 2, § 18)

The Minnesota Legislature repealed all prohibitions regarding the sale of butane and butane lighters to minors in 1997, before Blaine's Ordinance was passed in June of 2000. Thus, despite the City's apparent intent, Blaine's Ordinance was not and has never been consistent with Minnesota law.

The Ordinance is also preempted by Federal law. The Consumer Product Safety Act ("CPSA"), which regulates lighters states that:

[N]o State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard.

15 U.S.C. § 2075

This provision has been interpreted by various courts to prohibit states and municipalities from regulating the same subjects addressed by the CPSA – i.e. hazards associated with children in possession of lighters. See *Moe v. MTD Products, Inc.*, C.A.8 (Minn.) 1995, 73 F.3d 179 (State common law claim for failure to warn preempted by Consumer Products Safety Act). See also *Cortez v. MTD Products, Inc.*, N.D.Cal.1996, 927 F.Supp. 386 ("Wording of preemption clause of Consumer Product Safety Act (CPSA) makes it apparent that Congress intended to preempt positive enactments, such as statutes and regulations, by states that address the same risks of injury that are addressed by operative federal standards."). Federal regulations already require mandatory child safety devices for lighters.

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See 16 C.F.R. 1210.1-1210.15. Therefore, to the extent Blaine's Ordinance attempts to regulate lighters, it is preempted by Federal law.

Practicality

Finally, Blaine's Ordinance simply is not practical. Under one reading of the Ordinance, a 17 year-old who owns a car with a cigarette lighter is in criminal violation of the Ordinance unless she has express permission from a parent or guardian. Similarly, Boy Scouts lighting a fire without adult supervision or permission are in criminal violation of the Ordinance. These potential applications are unreasonable and cannot be what the City Council intended when passing the Ordinance on June 1, 2000.

Blaine's Ordinance is unworkable, invalid, unconstitutional, and inconsistent with State and Federal law. We urge that it be repealed. There are no other municipalities in the state of Minnesota which have a similar, criminal ordinance. We would like to resolve this issue amicably out of court. We would like to present our concerns at the next City Council meeting on July 13, 2017 in the hope of resolving these issues. Please consider placing this matter on the City Council's agenda for that meeting.

Thank you for your kind attention to this matter. Please contact me with any questions.

Sincerely,



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WLM/mam  
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