

ORDINANCE NO. 95, FOURTH SERIES

AN ORDINANCE AMENDING
REDWOOD FALLS CODE OF ORDINANCES §6.23 PERTAINING
TO THE REGULATION AND SALE OF TOBACCO

FINDINGS AND PURPOSE:

Because the City of Redwood Falls recognizes that 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 law; and because marketing analysis, public health research, and because commercial tobacco use has been shown to be the cause of many serious health problems which subsequently place a financial burden on all levels of government, this ordinance is intended to regulate the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect youth and young adults against the serious health effects associated with use and initiation, and to further the official public policy of the state to prevent young people from starting to smoke, as stated in Minn. Stat. § 144.391, as it may be amended from time to time.

NOW THEREFORE, THE CITY COUNCIL OF REDWOOD FALLS ORDAINS:

SECTION 1. That Redwood Falls City Code of Ordinances §6.23 shall be amended to read as follows:

§ 6.23 TOBACCO.

Subd. 1. *Definitions.*

A. The term "child-resistant packaging" shall mean 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.

B. The term "cigar" shall mean 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 it may be amended from time to time.

C. A. ~~The term "compliance checks" shall mean the system the city uses to investigate and ensure that those authorized to sell licensed products tobacco, tobacco products and tobacco-related devices are following and complying with the requirements of this section. "Compliance checks" shall involve the use of minors as authorized by this section. "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 the city or other units of government for educational, research, and training purposes or for the purpose of enforcing appropriate federal,~~

state or local laws and regulations relating to licensed products, tobacco, tobacco products and tobacco-related devices.

D. The term "delivery sale" shall mean the sale of any licensed product to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the-counter sales transaction in a licensed retail establishment. Delivery Sale includes but is not limited to the sale of any licensed product when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. Delivery Sale includes delivery by licensees or third parties by any means, including curbside pick-up.

E. The term "electronic delivery device" shall mean 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 nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as "drugs," "devices," or "combination products," as defined in the Federal Food, Drug, and Cosmetic Act.

F. B. The term "individually packaged" means 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.

G. The term "indoor area" shall mean 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.

H. The term "licensed products" collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

I. C. The term "loosies" means the common term used to refer to a single or individually packaged cigarette, single cigarettes, cigars, and any other licensed products that have been removed from their original retail packaging and offered for sale. Loosies does not include premium cigars that are hand-constructed, have a wrapper made entirely from whole tobacco leaf, and have a filler and binder made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor.

J. D. The term "minor" means any natural person who has not yet reached the age of 21 +8 years.

K. E. The term "movable place of business" refers to 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.

L. The term "nicotine or lobelia delivery product" shall mean Any product containing or delivering nicotine or lobelia, whether natural or synthetic, 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 nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as "drugs," "devices," or "combination products," as defined in the Federal Food, Drug, and Cosmetic Act.

M. F. The term "possession" shall mean the care, custody, dominion and control over any licensed ~~tobacco, tobacco product or tobacco-related device.~~

N. G. The term "retail establishment" means any place of business where licensed ~~products tobacco, tobacco products or tobacco-related devices~~ are available for sale to the general public. "Retail establishments" shall include, but not be limited to, grocery stores, ~~tobacco product shops,~~ convenience stores, liquor stores, gasoline service stations, bars and restaurants.

O. H. The term "sale" means any transfer of goods for money, trade, barter or other consideration.

P. I. The term "self-service merchandising" means open displays of licensed ~~products tobacco, tobacco products or tobacco-related devices~~ in any manner where any person shall have access to the ~~licensed products tobacco, tobacco products or tobacco-related devices,~~ without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the ~~licensed products tobacco, tobacco product or tobacco-related device~~ between the customer and the licensee or employee. "Self-service merchandising" ~~shall not include vending machines.~~

Q. The term "smoking" shall mean 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.

R. J. The terms "tobacco" or "tobacco products" mean cigarettes and any products containing, made, or derived from commercial 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; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of commercial tobacco. A TOBACCO PRODUCT does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as "drugs," "devices," or "combination products," as

~~defined in the Federal Food, Drug, and Cosmetic Act. Tobacco Products exclude any tobacco 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. These definitions are intended to mirror the definitions set forth in M.S. § 297F.01, subd. 19 and M.S. § 609.685, subd. 1, as amended from time to time.~~

~~S. K. The term "tobacco-related devices" means 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.~~

~~I. L. The term "vending machine" means any mechanical, electric or electronic, or other type of device which dispenses licensed products tobacco, tobacco products or tobacco-related devices upon payment by any form by the person seeking to purchase the licensed product, the insertion of money, tokens or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product or tobacco related device.~~

Subd. 2. *License.* It is unlawful for any person to sell or offer to sell any licensed product tobacco, tobacco products or tobacco-related device without first having obtained a license to do so from the city.

A. *Application and Term.* 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 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 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. All licenses issued under this section shall be valid for one calendar year from the date of issue.

B. *Action.* The City Council may approve or deny the application for a 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 application, the City Clerk will issue the license to the applicant. If the City Council denies the application, notice of the denial will be given to the applicant along with notice of the applicant's right to appeal the decision.

C. *Denial.* 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 penalized within the past five years for 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 of the information required on the licensing application or provides false or misleading information.
5. The applicant is prohibited by Tribal, federal, state, or other local law, ordinance, or other regulation from holding a license.
6. The business for which the license is requested is a moveable place of business. Only fixed-location retail establishments are eligible to be licensed.
7. Any other suitable reason that the granting of a license to the applicant is inconsistent with public health, safety, and welfare, including the applicant's history of noncompliance with this ordinance and other laws relating to the sale of licensed products.

D. B. Revocation and Suspension. Any license issued under this section may be revoked or suspended as provided in Subdivision 7 the violations and penalties section of this section. If a license is mistakenly issued to a person or renewed, the city will revoke the license upon the discovery that the person was ineligible for the license under this ordinance. The city will provide the license holder with notice of the revocation, along with information on the right to appeal.

E. 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.

E. C. Moveable Place of Business. Separate licenses shall be issued for the sale of tobacco at each fixed place of business and no license shall be issued for a movable place of business.

G. D. Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premises.

H. E. Fees. No license shall be issued under this section until the appropriate license fee shall be paid in full. The fee for a license shall be set forth in the fee schedule adopted and approved by the City Council.

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 is a privilege and not a right. The issuance of a license is a privilege and does not entitle the license holder to an automatic renewal of the license.

K. Instructional program. Licensees must complete and ensure that all employees complete a training program on the legal requirements related to the sale of licensed products and the possible consequences of license violations. Any training program must be pre-approved by the city. Licensees must maintain documentation demonstrating their compliance and must provide this documentation to the city at the time of renewal, or whenever requested to do so during the license term.

Subd. 3. *Prohibited Sales.* It shall be a violation of this section for any person to sell or offer to sell any licensed product ~~tobacco, tobacco product or tobacco-related device~~:

A. To any person under the age of ~~18~~ 21 years;

B. By means of any type of vending machine; ~~except as may otherwise be provided in this section~~;

C. By means of self-service merchandising ~~methods~~ whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the licensed product ~~tobacco, tobacco product or tobacco-related device~~ and whereby there is not a physical exchange of the licensed product ~~tobacco, tobacco product or tobacco-related device~~ between the licensee's employee and the customer. All licensed products must be stored behind the sales counter, in a locked case, in a storage unit, or in another area not freely accessible to the general public;

D. By means of "loosies", as defined in Subd. 1 of this section;

E. Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other products subject to this ordinance; ~~and~~

~~F.~~ E. By means of delivery sales. All sales of licensed products must be conducted in person, in a licensed retail establishment, in over-the-counter sales transactions; and

~~G. F.~~ By any other means, to any other person, or in any other manner or form prohibited by federal, state or other local law, ordinance provision or other regulation.

Subd. 4. *Illegal Acts.* Unless otherwise provided, the following acts shall be in violation of this section.

A. ~~Illegal Sales.~~ It shall be a violation of this section for any person to sell or otherwise provide any licensed product ~~tobacco, tobacco product or tobacco-related device~~ to any minor.

~~B. Illegal Possession.~~ It shall be a violation of this section for any minor to have in his or her possession any licensed product ~~tobacco, tobacco product or tobacco-related device~~. This subdivision shall not apply to minors lawfully involved in a compliance check.

~~C. Illegal Use.~~ It shall be a violation of this section for any minor to smoke, chew, sniff or otherwise use any licensed product ~~tobacco, tobacco product or tobacco-related device~~.

~~B. D.~~ B. D. Illegal Procurement. It shall be a violation of this section for any minor to purchase or attempt to purchase or otherwise obtain any licensed product, ~~tobacco, tobacco product or tobacco-related device~~, and it shall be a violation of this section for any person to purchase or otherwise obtain such items on behalf of a minor. It shall further be a violation for any person to

coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any licensed product, tobacco, tobacco product or tobacco-related device. This subdivision shall not apply to minors lawfully involved in a compliance check.

C. ~~E.~~ Use of False Identification. It shall be a violation of this section for any minor to attempt to disguise his or her true age by the use of a false form of identification whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

D. ~~F.~~ Vending Machines. It shall be unlawful for any person licensed under this section to allow the sale of any licensed product ~~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.~~

E. ~~G.~~ Self Service Sales. It shall be unlawful for a licensee under this section to allow the sale of any licensed product ~~tobacco, tobacco products or tobacco-related devices~~ by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product or the tobacco-related device between the licensee or his or her clerk and the customer. All licensed products ~~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 licensed products, tobacco, tobacco products or tobacco-related devices at the time this section is adopted shall comply with this section by 1-1-1998.~~

F. ~~H.~~ Exemption. Subd. 4.~~E.G.~~ above shall not apply to retail stores which derive at least 90% of their revenue from tobacco and tobacco-related products and which cannot be entered at any time by persons younger than ~~18~~ 21 years of age.

Subd. 5. ~~Responsibilities, 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 once per year, the city shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors ~~over the age of 15~~ 17 years, but less than ~~18~~ 21 years, to enter the licensed premise to attempt to purchase tobacco, tobacco products or tobacco-related devices. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products or tobacco-related devices when such items are obtained as a part of the compliance check. ~~No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this section shall prohibit compliance checks authorized by state or federal laws for educational, research or training purposes or required for the enforcement of a particular state or federal law.~~

A. All licensees are responsible for the actions of their employees regarding the sale, offer to sell, and furnishing of licensed products on the licensed premises. The sale, offer to sell, or furnishing of any licensed product by an employee shall be considered an act of the licensee.

B. Licensees must verify by means of government-issued photographic identification containing the bearer's date of birth 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.

C. Notice of the legal sales age, age verification requirement, and possible penalties for underage sales must be posted prominently and in plain view at all times 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.

Subd. 6. *Compliance Checks and Inspections.*

A. All licensed premises must be open to inspection by the city police or other authorized city official or their designees during regular business hours.

B. From time to time, but at least once per year, the city will conduct compliance checks to ensure compliance with all provisions of this ordinance.

C. In accordance with state law, the city will conduct a compliance check that involves the participation of a person at least 17 years of age, but under the age of 21 to enter the licensed premises to attempt to purchase licensed products. Prior written consent from a parent or guardian is required for any person under the age of 18 to participate in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel. Minors used for compliance checks shall not be guilty of unlawful possession of licensed products when such items are obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this section shall prohibit compliance checks authorized by state or federal laws for educational, research or training purposes or required for the enforcement of a particular state or federal law.

Subd. 7. 6. *Violations and Penalties.*

A. *Criminal Penalties.*

1. Upon discovery of a suspected violation, the violator shall be issued a citation by the city police and given notice of his or her right to be heard on the accusation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense. Any person found to be in violation of this section shall be guilty of a misdemeanor and shall be subject to the maximum penalty authorized by state law for a misdemeanor.

2. As an alternative to a misdemeanor prosecution, the city may offer the accused violator a chance to pay an administrative fine as provided in the fine schedule adopted and amended from time to time by the Council. If the accused violator accepts the administrative option, he or she may pay the fine to the city's Deputy Clerk or he or she may, within ten days of the notice, request an administrative hearing before the Council or authorized hearing officer designated by

the Council. If, after the hearing, the person is found to be in violation of this section, he or she shall be ordered to pay the fine. If a violator elects to pay the fine, or if he or she is acquitted of the violation by the hearing officer, he or she shall not be subject to misdemeanor prosecution for violation of the section. If the violator fails to pay the fine within 90 days following the hearing, or 90 days following the last day to request a hearing when a hearing has not been requested, the city may vacate the civil action and proceed with the misdemeanor prosecution. At any time, the accused violator may abandon his or her request to pursue the administrative penalty and elect to have his or her case heard in court under the misdemeanor prosecution. The city shall also have the right to refuse to offer the administrative penalty and instead proceed directly with the misdemeanor prosecution for a particular offense. If the accused violator accepts the administrative option, no administrative fine shall be imposed pursuant to Subd. 76.C. of this section.

3. In addition to any fine or other penalty, whether administrative, civil or criminal, violation of this section by a licensee under this section shall be grounds for the suspension or revocation of the license.

B. *License Revocation, Suspension and Administrative Fine.* The Council may revoke or suspend for three days any license issued under this section and shall impose a mandatory administrative fine of ~~at least \$30075, or more,~~ as provided in the fine schedule adopted and amended from time to time by the Council, upon a finding that a licensee or its employee violated this section. In the event the city finds that a licensee or its employee has violated this section twice within a 3624-month period, the city may revoke or suspend for a period of six months and shall impose a mandatory administrative fine of ~~at least \$600200, or more,~~ as provided in the fine schedule adopted and amended from time to time by the Council. A third or subsequent offense at the same location within a 3624-month period by a licensee or employee shall subject the licensee to a mandatory administrative fine of \$1,000 and a seven-day suspension of the licensee's authority to sell tobacco at that location, and shall constitute a basis for a permanent revocation of the licensee's authority to sell tobacco at that location, ~~and shall subject the violator to a mandatory administrative fine of at least \$250, or more, as provided in the fine schedule adopted and amended from time to time by the Council.~~ No suspension or revocation shall take effect until the licensee has received notice, served personally or by certified mail, of the alleged violation and has been afforded an opportunity for a hearing pursuant to § 2.06 of this code. A decision of the Council that a violation has occurred must be in writing. Unless the licensee requests review of the order imposing an administrative fine, the penalty is due and payable on the thirty-first day after the order was received. All administrative fines shall be payable to the city.

C. *Administrative Fine for Other Individuals.* In addition to any fine or other penalty, whether administrative or criminal, other individuals, other than minors regulated by Subd. 76.D. below, found to be in violation of this section shall be charged an administrative fine of \$50 and required to attend an instructional program regarding the requirements of the tobacco retail licensing ordinance. No penalty may be imposed until the individual has received notice, served personally or by certified mail, of the alleged violation and an opportunity for a hearing before a person authorized by the licensing authority to conduct a hearing. Any decision that a violation has occurred must be in writing.

D. ~~Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase licensed products tobacco, tobacco products or tobacco-related devices,~~ shall be charged an administrative fine of \$50. Any second or subsequent violation of this section by a minor shall result in the imposition of an administrative fine of \$100. In addition to any fine or other penalty, whether administrative or criminal, any minor found to be in violation of this section shall be provided with notification of any tobacco-related programs, courses or classes offered within the community which are designed to provide education on the harmful effects of the use of tobacco or tobacco products and/or instruction on smoking cessation.

E. Statutory penalties. If the administrative penalty for violations against licensed retailers under Subd. 7.B. authorized to be imposed by Minn. Stat. § 461.12, as it may be amended from time to time, differ from that established in this section, then the higher penalty will prevail.

Subd. 8. Exceptions and Defenses.

A. Nothing in this ordinance prevents the provision of tobacco or tobacco-related devices to any person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.

B. 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 2. 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.

PASSED AND ADOPTED by the City Council of the City of Redwood Falls, Minnesota this 6th day of May, 2025

ATTEST:



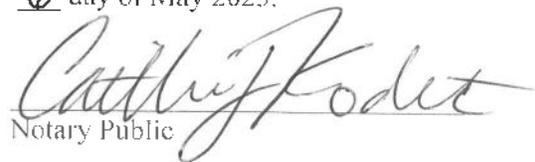
Keith Muetzel
City Administrator



Tom Quackenbush
Mayor

(City Seal)

Subscribed and sworn to before me this
6th day of May 2025.



Caitlin J. Kodet
Notary Public

Introduction: 04/15/2025
Posting: 04/17/2025
Adopted: 05/06/2025
Approval Published: 05/15/2025

