

ORDINANCE 22-080

Introduced by Councilor Olson

AN ORDINANCE AMENDING ARTICLE XII. TOBACCO

THE CITY COUNCIL OF ALBERT LEA, MINNESOTA ORDAINS:

ARTICLE XII. TOBACCO and EDIBLE CANNABINOID PRODUCTS

Sec. 12.396. Purpose.

Tobacco. Because the city recognizes that many persons under twenty-one (21) years of age purchase or otherwise obtain, possess, and use tobacco, tobacco products, and tobacco-related devices, and such sales, possession, and use are violations of both state and federal laws, and because studies, which are hereby accepted and adopted, have shown that most smokers begin smoking before they have reached twenty-one (21) years of age and that those persons who reach twenty-one (21) years of age 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 article shall be intended to regulate the sale, possession, and use of tobacco, tobacco products, and tobacco-related devices for the purpose of enforcing and furthering existing laws, to protect persons under twenty-one (21) years of age 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 Minn. Stats. § 144.391.

Edible Cannabinoid Products: The Minnesota Legislature adopted M.S. §151.72, making it legal to sell certain edibles and beverages infused with tetrahydrocannabinol (THC), the cannabis ingredient extracted from hemp. It is vital to ensure that edible cannabinoid products are sold in accordance with State Law. The United States Surgeon General has issued an advisory to alert the public to the known and potential harms to developing brains posed by the increasing availability of highly potent tetrahydrocannabinol in multiple, concentrated forms, and the reasons for concerns with the increasing use of such chemicals by pregnant women, adolescents, and youth. The National Academies of Science, Engineering and Medicine notes that the growing acceptance, accessibility, and use of tetrahydrocannabinol and its derivatives have raised important public health concerns, while the lack of aggregated knowledge of tetrahydrocannabinol' health effects has led to uncertainty about the impact of its use. Minnesota has recognized the danger of cannabis use among youth by prohibiting the sale of Edible Cannabinoid Products to those under age 21 (Minn. Stat.§ 151.72, subd. 3(c) and by requiring that edibles be packaged without appeal to children and in child- resistant containers (Minn. Stat.§ 151.72, subd. 5a(b)). Research has demonstrated that local tobacco retail ordinances dramatically reduce youth access to cigarettes, and therefore provide a useful model for preventing sales to youth of cannabis products.

Sec. 12.397. Definitions and interpretations.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Compliance checks means 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 article. Compliance checks shall involve the use of persons under twenty-one (21) years of age as authorized by this article. The term "compliance checks" also means the use of underage persons who attempt to purchase licensed products 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 licensed products.

Electronic delivery device or electronic cigarette means any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. The term "electronic delivery device" includes any component part of a product, whether or not marketed or sold separately. The term "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. Nicotine or lobelia delivery devices means any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco as defined in this section, not including any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

Edible Cannabinoid Product means a product or substance defined as an "Edible Cannabinoid Product" under Minnesota Statutes § 151.72.

Individually wrapped tobacco and tobacco products mean the practice of selling any tobacco or tobacco product wrapped individually for sale. The term "individually wrapped tobacco and tobacco products" includes, but is not 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 article shall not be considered individually packaged.

Loosies means the common term used to refer to a single or individually packaged cigarette.

Licensed Products is the term that collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product. This term also includes any lawful Edible Cannabinoid Product.

Moveable place of business refers to any form of business operated out of a 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.

Retail establishment means any place of business where t licensed products are available for sale to the general public. The term "retail establishments" includes, but is not limited to, grocery stores, convenience stores, restaurants, bars, tobacco products shops, CBD stores, and liquor establishments.

Exclusive Liquor Store refers to an establishment that meets the definition of exclusive liquor store in Minnesota Statutes, section 340A.101, subdivision 10.

Sell or Sale means any transfer of goods for money, trade, barter, or other consideration, including any provision of goods for free as part of a sale of other goods or services.

Self-service merchandising means open displays of licensed products in any manner where any person shall have access to the 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 licensed products between the customer and the licensee or employee. The term "self-service merchandising" does not include vending machines.

Tobacco or tobacco products means cigarettes and any product containing, made, or derived from tobacco, nicotine, or lobelia, 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, 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. The term "tobacco" or "tobacco products" excludes 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.

Tobacco-related devices means any tobacco product as well as a pipe, rolling papers, electronic delivery device, nicotine or lobelia delivery device, or other device intentionally designated or intended to be used in a manner which enables the chewing, sniffing, vaping, or smoking of tobacco or tobacco products.

Underage person means any natural person who has not yet reached twenty-one (21) years of age.

Vending machine means any mechanical, electric or electronic, or other type of device which 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 products.

Sec. 12.398. License.

(a) *Required.* No person shall sell or offer to sell any licensed product without first having obtained a license to do so from the city or other statutory governmental licensing entity. There shall be a separate license for selling Tobacco Products/Tobacco Related Devices, and for selling Edible Cannabinoid Products. Each such license shall identify the premises upon which the licensed products will be sold. All sales of licensed products shall occur within the licensed

premises. Every licensee under this Section shall be responsible for the acts or omissions regulated under this Section.

(b) *Application.* An application for a license to sell licensed products 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 shall determine whether an application is complete. In the event the application is incomplete, he shall return the application to the applicant with notice of the information necessary to make the application complete.

(c) *Action.* The city may either approve or deny the license, or may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant as is deemed necessary. If the city shall approve the license, the city shall issue the license to the applicant. If the city denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the decision to the hearings officer.

(d) *Term.* All licenses issued under this section shall be valid for one (1) calendar year from the first day of August until the last day of July of each succeeding year.

(e) *Revocation or suspension.* Any license issued under this section may be revoked or suspended as provided in sections 12.407 and 12.408.

(f) *Transfers.* All licenses issued under this section shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued.

(g) *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 section.

(h) *Display.* All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

(i) *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 thirty (30) days but no more than sixty (60) days before the expiration of the current license.

(j) *Issuance privilege.* The issuance of a license issued under this section 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.

Sec. 12.399. Fees.

No license shall be issued under this article until the appropriate license fee shall be paid in full. The fee for a license under this section shall be as established in the annual fee schedule.

Sec. 12.400. Basis for denial of license.

The following shall be grounds for denying the issuance or renewal of a license under this article; 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. 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 section:

- (1) The applicant is under the twenty-one (21) years of age.
- (2) The applicant has been convicted within the past five (5) 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 revoked within the preceding twelve (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 such a license.
- (6) Exclusive Liquor Store. No license shall be issued to an exclusive liquor store as defined in Minnesota Statutes, section 340A.101, subdivision 10.

Sec. 12.401. Prohibited sales.

It shall be a violation of this article for any person to sell or offer to sell any licensed product:

- (1) To any person under twenty-one (21) years of age. Licensees must verify by means of government-issued photographic identification that purchaser is at least twenty-one (21) years of age.
- (2) By means of any type of vending machine, except as may otherwise be provided in this section.
- (3) By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premises in order to receive the licensed product and whereby there is not a physical exchange of the licensed product between the licensee or the licensee's employee, and the customer.
- (4) By means of loosies as defined in section 12.397.
- (5) 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. It is further not the intention of this provision to ban the sale of lawfully manufactured and packaged Edible Cannabinoid Products as allowed under state law.
- (6) 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.
- (7) Notice of the legal sales age and age verification requirement must be posted prominently and in plain view at all times at each location where licensed products are offered for sale and must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase,

Sec. 12.402. Vending machines.

It shall be unlawful for any person licensed under this article to allow the sale of licensed products by the means of a vending machine unless persons under twenty-one (21) years of age are at all times prohibited from entering the licensed establishment.

Sec. 12.403. Self-service sales.

It shall be unlawful for a licensee under this article to allow the sale of licensed products by any means where by 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 licensed product between the licensee or his clerk 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.

Sec. 12.404. Responsibility.

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

Sec. 12.405. Compliance checks and inspections.

All licensed premises shall be open to inspection by the city police department 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 fifteen (15) years of age but less than eighteen (18) years of age, to enter the licensed premise to attempt to purchase licensed products. Persons who are over eighteen (18) years of age but less than twenty-one (21) years of age may also be used for compliance checks. Minors and persons who are over eighteen (18) years of age but less than twenty-one (21) years of age used for the purpose of compliance checks shall be supervised by designated law enforcement officers or other designated city personnel. Minors and persons who are over eighteen (18) years of age but less than twenty-one (21) years of age used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase, nor the unlawful possession of licensed products when such items are obtained or attempted to be obtained as a part of the compliance check. No minor or person who is over eighteen (18) years of age but less than twenty-one (21) years of age used in compliance checks shall attempt to use a false identification misrepresenting the person's age, and all persons lawfully engaged in a compliance check shall answer all questions about the underage person's age asked by the licensee or his employee and shall produce any identification, if any exists, for which he 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.

Sec. 12.406. Other illegal acts.

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

(1) *Illegal sales.* It shall be a violation of this article for any person to sell or otherwise provide any licensed products to any underage person.

(2) *Illegal possession.* It shall be a violation of this article for any person under twenty-one (21) years of age to have in his possession any licensed products. This subsection shall not apply to underage persons lawfully involved in a compliance check.

(3) *Illegal use.* It shall be a violation of this article for any person under twenty-one (21) years of age to consume or otherwise use any Edible Cannabinoid Product.

(4) *Illegal procurement.* It shall be a violation of this article for any person under twenty-one (21) years of age to purchase or attempt to purchase or otherwise obtain any Edible Cannabinoid Product. It shall be a violation of this article for any person to purchase or otherwise obtain those items on behalf of a person under twenty-one (21) years of age. 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. This subsection shall not apply to minors lawfully involved in a compliance check.

(5) *Use of false identification.* It shall be a violation of this article for any person under twenty-one (21) years of age to attempt to disguise his 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.

(6) A business establishment that offers for sale Edible Cannabinoid Products with non-Cannabinoid Products shall ensure that all packages of the products are separated, displayed and offered for sale only:

- i. Behind a checkout counter where the public is not permitted; or
- ii. Inside a locked display case;

(7) A business establishment that offers for sale Edible Cannabinoid Products as their primary business shall ensure that an attending employee:

- i. Is able to monitor the product; or
- ii. Will ask for identification upon entry to ensure no person under the age of 21 has access; or
- iii. Keep all product secured as prescribed in Sec. 12.406(6).

(8) No person may sell an Edible Cannabinoid Product to a person under the age of 21 years.

(9) No person may sell an Edible Cannabinoid Product in a package or container that is labelled or packaged in a manner inconsistent with Minnesota Statutes § 151.72 (2022).

Sec. 12.407. Violations.

- (a) *Notice.* 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 right to be heard on the accusation.
- (b) *Hearings.* If a person accused of violating this article so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator. A hearing may also be requested to challenge any confiscation of licensed products as “contraband” as defined under state law.
- (c) *Hearing officer.* The city manager shall serve as the hearing officer.
- (d) *Decision.* If the hearing officer determines that a violation of this article did occur, that decision, along with the hearing officer’s reasons for finding a violation and the penalty to be imposed under section 12.408 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, such 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 jurisdiction of the county in which the alleged violation occurred.
- (f) *Misdemeanor prosecution.* Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this article. If the city elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.
- (g) *Continued violation.* Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

Sec. 12.408. Penalties.

- (a) *Licensees.* Any licensee found to have violated this article, or whose employee shall have violated this article, shall be charged an administrative fine of three hundred dollars (\$300) for a first violation of this article; six hundred dollars (\$600) for a second offense at the same licensed premises within a thirty-six (36) month period; and one thousand dollars (\$1,000) for a third or subsequent offense at the same location within a thirty-six (36) month period. In addition, after the third offense, the license shall be suspended for not less than seven (7) days and may be revoked
- (b) *Other individuals.* An individual who sells, gives, or otherwise furnishes licensed products to a person under the age of 21 years may be charged an administrative penalty of \$50. No penalty may be imposed until the individual has received notice, served personally or by mail, of 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 has occurred must be in writing.
- (c) *Misdemeanor.* Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this article.

(d) *Statutory penalties.* If the administrative penalties authorized to be imposed by M.S. § 461.12, as it may be amended from time to time, differ from those established in this section, then the statutory penalties shall prevail.

Sec. 12.409. Exceptions and defenses.

(a) Nothing in this article shall prevent the providing of tobacco, tobacco products, or tobacco-related devices to a person under twenty-one (21) years of age as part of a lawfully recognized religious, spiritual, or cultural ceremony.

(b) It shall be an affirmative defense to the violation of this article for a person to have reasonably relied on proof of age as described by state law.


(c) The penalties in this article do not apply to a person under twenty-one (21) years of age who purchases or attempts to purchase licensed products while under the direct supervision of a responsible adult for training, education, research, or enforcement purposes.

That the motion for the adoption of the foregoing ordinance was duly seconded by Councilor Brooks, and upon a vote being taken thereon, the following voted in favor thereof: Councilors Murray, Baker, Howland, Olson, Rasmussen, Brooks and Mayor Rasmussen Jr.

And, the following voted against the same: None

Introduced the first time on the 26th day of September, 2022

Introduced the second time on the 10th day of October, 2022



Mayor Vern Rasmussen Jr.

Filed and attested to the 11th day of October, 2022



Secretary of the Council