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ORDINANCE 64 TOBACCO SALES

Section 64.01: PURPOSE. Because the City recognizes that many persons under the age of 21 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, and tobacco related devices; and such sales, possession, and uses are violations of both State and Federal laws, and because studies have shown that most smokers begin smoking before age 21; 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 Ordinance 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 minors 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 of Minnesota in regard to preventing young people from starting to smoke as stated in Minn. Stat. §144.391, as amended.

Section 64.01 amended 4/20/22

Section 64.02: DEFINITIONS. For the purposes of this Ordinance each of the following words, groups of words and phrases shall have the following meanings unless the context in which used clearly indicates a different meaning.

Subd. 1: City. Shall mean the City of Albany, Minnesota.

Subd. 2: Person. Shall mean and include an individual, a partnership, a corporation, group of individuals, or entities associated together for any purpose which includes the sale of tobacco.

Subd. 3: Retail Tobacco Dealer. Shall mean any Person or entity selling, offering for sale, exposing for sale or having in possession tobacco for sale.

Subd. 4: Location. Shall mean the building, room or rooms, space or area where tobacco is sold at retail, identified by a postal address and under the control of one Person.

Subd. 5: Operator. Shall mean the person in legal possession and control of a location by reason of ownership, lease, contract or agreement, for the sale of tobacco at retail.

Subd. 6: Tobacco Vending Machine. Means any mechanical, electrical or other device which upon the insertion of a coin or coins, tokens or other objects shall release or dispense in packages or otherwise, tobacco for the purpose of selling the same at retail.

Subd. 7: Minor. Means any individual, without regard to sex, who has not attained the age of eighteen (18) years.

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Subd. 8: Tobacco or Tobacco Products. Means any substance or item containing, made or derived from tobacco that is intended for human consumption, including but not limited to, cigarettes; cigars; pipe tobacco; 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; dipping tobacco, refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing, sniffing or smoking, or to be absorbed, dissolved, inhaled, snorted or ingested by any other means.

Section 64.02 Subd. 8 amended 4/20/22

Subd. 9: Tobacco Related Devices. Shall mean any tobacco product as well as a pipe, rolling papers, electronic delivery device or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking or inhalation of aerosol or vapor of tobacco or tobacco products. Tobacco related devices includes components of tobacco-related devices which may be marketed or sold separately.

Section 64.02 Subd. 9 amended 4/20/22

Subd. 10: Self-Service Vending. Shall mean open displays of tobacco, tobacco products, or tobacco related devices in any manner where any person shall have access to the 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 tobacco, tobacco product, or tobacco related device between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

Subd. 11: Tobacco Shop. Shall mean a self-contained facility or section of a retail store which is physically separated from other areas of the business, that is not more than 1000 square feet in area, in which tobacco products are offered for sale, with or without other non-tobacco products, which includes open air display of individual products for inspection and selection by patrons, and which is continuously staffed by an employee or to which the entrance and exit to the enclosed area is clearly visible to the cashier.

Subd. 12: Carton. Shall mean a package containing ten (10) or more individual packages of cigarettes.

Subd. 13: Sale. Shall mean any transfer of goods for money, trade, barter, or other consideration.

Subd. 14: 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 inhalation of aerosol or vapor from the product. Electronic delivery device includes but is not limited to devices manufactured, marketed, or sold as electronic cigarettes, electronic cigars, electronic pipe, vape pens, modes, 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

Section 64.02 Subd. 14 added 4/20/22

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Section 64.03: LICENSE REQUIRED. No Person shall sell at retail any tobacco within the City's territorial limits unless the Person then holds a retail tobacco dealer's license in full force and effect.

Subd. 1: Application. Any Person desiring a retail tobacco dealer's license shall make and file with the City Clerk/Administrator a written application executed in duplicate containing the applicant's full name, residential and business addresses and telephone numbers, and the name of the business for which the license is sought, and any other information the Council requires, and accompanied by the required fee established in Appendix A.

Subd. 2: Investigation. The City Clerk/Administrator shall immediately transmit a copy of the application to the Chief of Police, who shall investigate all facts and information regarding the applicant's fitness to receive the license and perform the duties imposed by this Ordinance. Upon completing the investigation, the Chief of Police shall forward a written report of his or her findings and recommendations to the City Council regarding the issuance of a license to the applicant.

Subd. 3: Issuance. The City Council shall consider the facts and the Chief of Police's recommendation, together with any material facts which it may have or obtain, and then, by resolution, shall approve or deny the application and forward a copy of the resolution to the City Clerk/Administrator. If the Council approves the application, the City Clerk/Administrator shall execute and deliver a license to the applicant.

Subd. 4: Term. The license shall be for one (1) calendar year from the issued date, or, if it is a first license for the location by the licensee, then for the balance of the current year. If the Council denies the license, the City Clerk/Administrator shall give notice of the denial to the applicant.

Subd. 5: Fees. The Council shall fix the basic fee to be charged for a license at each separate location. Appendix A lists the current license fee.

Subd. 6: Transfers. All licenses issued under this Ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. Transfers of licenses to another person or location shall not be made without the Council's prior approval.

Subd. 7: Display. All licenses shall be posted and displayed on the licensed premises in plain view of the general public.

Subd. 8: Renewal. The renewal of a license issued under this Section shall be handled in the same manner as the original application. The applicant shall request a renewal at least thirty (30) days but not more than sixty (60) days before the current license expires. The issuance of a license under this Ordinance shall be considered a privilege and not an absolute right and shall not entitle the license holder to an automatic renewal.

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Subd. 9: Moveable Business Place. The City shall not issue a license to a moveable business place, including, but not limited to, a business operated out of a truck, van, automobile or other vehicle or structure that is not a fixed address store front or other permanent structure authorized for sales transactions.

Section 64.04: BASIS FOR LICENSE DENIAL. The following shall be grounds for denying the issuance or renewal of a license under this Ordinance, but 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:

Subd. 1: The applicant is a minor.

Subd. 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 tobacco or tobacco products, or tobacco related devices.

Subd. 3: The applicant has had a license to sell tobacco, tobacco products, or tobacco related devices revoked within the preceding twelve (12) months of the application date.

Subd. 4: The applicant fails to provide any information required on the application, or provides false or misleading information.

Subd. 5: The applicant is prohibited by federal, state or other local law, ordinance or other regulation, from holding such a license.

Section 64.05: PROHIBITED SALES. It shall be a violation of this ordinance for any Person to sell or offer to sell any tobacco, tobacco product, or tobacco related device:

Subd. 1: To a person under the age of twenty-one (21).

Section 64.05 Subd. 1 amended 4/20/22

Subd. 2: By means of any type of a tobacco vending machine, unless minors are at all times prohibited from entering the licensed establishment.

Subd. 3: By means of self-service vending.

Subd. 4: Containing opium, morphine, 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.

Subd. 5: 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.

Section 64.06: SALES OF LESS THAN A CARTON. No retail tobacco licensee shall offer or sell any tobacco products, packaged as less than a carton, unless:

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Subd. 1: By a vending display that is either on or accessible only from behind a check-out or service counter that is staffed by at least one (1) on-duty clerk or employee, and the display is within clear view of that on-duty clerk or employee, or

Subd. 2: Such displays are contained in a locked display cabinet, to which access is controlled by a store employee. This section shall not apply to a tobacco shop.

Section 64.07: SELF-SERVICE VENDING.

Subd. 1: Prohibition. It shall be unlawful for a licensee under this Ordinance to allow the sale of 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 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 tobacco, tobacco products, or tobacco related devices at the time this Ordinance is adopted shall comply with this Section within sixty (60) days.

Subd. 2: Exception. This Section shall not apply to a retail tobacco dealer where minors are prohibited at all times from entering and which derives forty (40%) percent or more of its revenue from the sale of tobacco and tobacco related products.

Section 64.08: COMPLIANCE CHECKS. Compliance checks of all tobacco products vendors shall be conducted on a random basis, but at least annually, and the results reported to the City Council. Compliance checks shall comply with state law.

Section 64.09: OTHER ILLEGAL ACTS. Unless otherwise provided, it shall be a violation of this Ordinance for any:

Subd. 1: Illegal Sales. Person to sell or otherwise provide any tobacco, tobacco product, or tobacco related device to any person under the age of twenty-one (21).

Section 64.09 Subd. 1 amended 4/20/22

Subd. 2: Illegal Possession. Minor to have in his or her possession any tobacco, tobacco product, or tobacco related device. This subdivision shall not apply to Minors lawfully involved in a Compliance Check.

Subd. 3: Illegal Use. Minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, or tobacco related device.

Subd. 4: Illegal Procurement. Any person under the age of twenty-one (21) to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, or tobacco related device, and it shall be a violation of this Ordinance for any person to purchase or otherwise obtain such items on behalf of a person under the age of twenty-one (21). It shall further be a

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violation for any person to coerce or attempt to coerce a Minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product, or tobacco related device. This subdivision shall not apply to persons lawfully involved in a Compliance Check.

Section 64.09 Subd. 4 amended 4/20/22

Subd. 5: False Identification. Any person under the age of twenty-one (21) 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 64.09 Subd. 5 amended 4/20/22

Section 64.10: VIOLATIONS.

Subd. 1: 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 or her right to be heard on the accusation.

Subd. 2: Hearings. If a person accused of violating this Ordinance so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

Subd. 3: Hearing Officer. The City Council shall serve as the hearing panel.

Subd. 4: Decision. If the hearing panel determines that a violation of this Ordinance did occur, that decision, along with the hearing panel's reasons for finding a violation and the penalty to be imposed under this Ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. If the hearing panel finds that no violation occurred or finds grounds for not imposing any penalty, the findings shall be recorded and a copy provided to the acquitted accused violator.

Subd. 5: Appeals. Appeals of any decision made by the hearing panel shall be filed in the Stearns County District Court.

Subd. 6: Misdemeanor Prosecution. Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this Ordinance.

Subd. 7: Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

Section 64.11: PENALTIES.

Subd. 1: Licensees. The City Council may impose a penalty against any licensee found to have violated this Ordinance or whose employee shall have violated this Ordinance according to the schedule established in Appendix A.

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Subd. 2: Other Individuals. Other individuals, other than persons under the age of twenty-one (21) regulated by subdivision 3 of this Section, found to be in violation of this Ordinance, shall be charged a fine as established in Appendix A.

Section 64.11 Subd. 2 amended 4/20/22

Subd. 3: Persons under the Age of 21. Persons under the age of twenty-one (21) found in unlawful possession of, or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, or tobacco related devices, shall be charged a fine as established in Appendix A and shall be required to attend an appropriate tobacco education, cessation or diversion class or program from an approved source. The Minor shall be responsible for all costs to attend the program(s).

Section 64.11 Subd. 3 amended 4/20/22

Subd. 4: Misdemeanor. Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any violation of this Ordinance.

Subd. 5: The Council shall either suspend for a period not to exceed 60 days or revoke any tobacco license upon finding that the licensee has failed to comply with any applicable statute, regulation, or provision of this ordinance relating to tobacco sales. No suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing. The Council may act as the hearing body under that act, or it may contract with the Office of Hearing Examiners for a hearing officer. The following are the minimum periods of suspension or revocation which shall be imposed by the Council for violations of the provisions of this section:

- a) The license shall be suspended by the Council after a finding that the licensee has failed to comply with any applicable statute, rule, or provision of this ordinance for at least the minimum periods as follows:
 - i) For the first violation within any three-year period, at least one day suspension in addition to any criminal or civil penalties which may be imposed.
 - ii) For a second violation within any three-year period, at least three consecutive days suspension in addition to any criminal or civil penalties which may be imposed.
 - iii) For the third violation within any three-year period, at least seven consecutive days suspension in addition to any criminal or civil penalties which may be imposed.
 - iv) For a fourth violation within any three-year period, the license shall be revoked.
- b) The Council shall select the day or days during which the license will be suspended.

Section 64.12: EXCEPTIONS AND DEFENSES. Nothing in this Ordinance shall prevent the providing of tobacco, tobacco products, or tobacco related devices to a person under the age of twenty-one (21) as part of a lawfully recognized religious, spiritual, or cultural

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ceremony. It shall be an affirmative defense to the violation of this Ordinance for a person to have reasonably relied on proof of age as described by State law.

Section 64.12 amended 4/20/22

Section 64.13: SEVERABILITY AND SAVINGS CLAUSE. If any section or portion of this Ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation or effect the validity and enforceability of any other section or provision of this Ordinance.

Section 64.14: CONFORMITY WITH OTHER LAWS. This Ordinance's remedies and administrative penalties are not exclusive and are in addition to any other remedies the law provides. This Ordinance does not specifically preclude criminal prosecution under state law regarding the use, possession or sale of tobacco.