



**City of North St. Paul
City Council
Workshop Meeting Agenda**

**September 19, 2023
5:15 PM**

The City Council Workshop Meeting will be conducted on **September 19, 2023** at 5:15 p.m. in the City Council Chambers of City Hall, located at 2400 Margaret St., North St. Paul.

The City Council will also be meeting by interactive TV under Minn. Stat. 13D.02.

The **September 19, 2023** Zoom meeting can be accessed via:

<https://tinyurl.com/NSPCityCouncil>

(from a PC, Mac, tablet, iPhone or Android device) or by phone at 1-929-205-6099.

Participants accessing the meeting by phone please use the following meeting ID:
84409094358

You can also watch the meeting on our YouTube channel here:

tinyurl.com/NSPYouTube

I. Call to Order

II. Roll Call

Council Member Cole
Council Member Schweer
Council Member Wong
Council Member Nordby
Mayor Monge

III. Adopt Agenda

IV. Topic(s)

- A. Dobbs/Mulcahy Garage Condo Concept for Margaret Street Site
- B. Tobacco Ordinance
- C. Adult Use Cannabis Legalization

V. Other Business

VI. Adjournment

The next regularly scheduled City Council Workshop meeting is October 3, 2023.



To	Date
Honorable Mayor Monge and City Council	September 19, 2023

Agenda Placement # IV.A

Topic(s)

Subject

Dobbs/Mulcahy Garage Condo Concept for Margaret Street Site

Background/Facts

Mr. John Dobbs presented a concept plan to the EDA at its May 9th meeting to develop the city-owned site on Margaret Street across the street from City Hall as garage condos. The EDA considered the proposal and has endorsed the project for City Council consideration. The project would develop a 1.72 acre site, 40,835 square feet of which is owned by the City and 33,992 square feet to the west that is owned by Gary Mulcahy. The project would include 28,000 square feet in two buildings to be used primarily as garage condos, but there is potential for small businesses. An easement would be established for existing utilities through the site. Mr. Dobbs had an opportunity to present the concept to City Council at the August 15 workshop; however, given other items on the agenda at that time, Council was unable to have a discussion on the proposal. Staff has added this item to the September 19 workshop agenda for that discussion to take place. Staff is looking to the Council on whether it would like to move forward with this proposal.

Recommended Action

N/A

Attachments

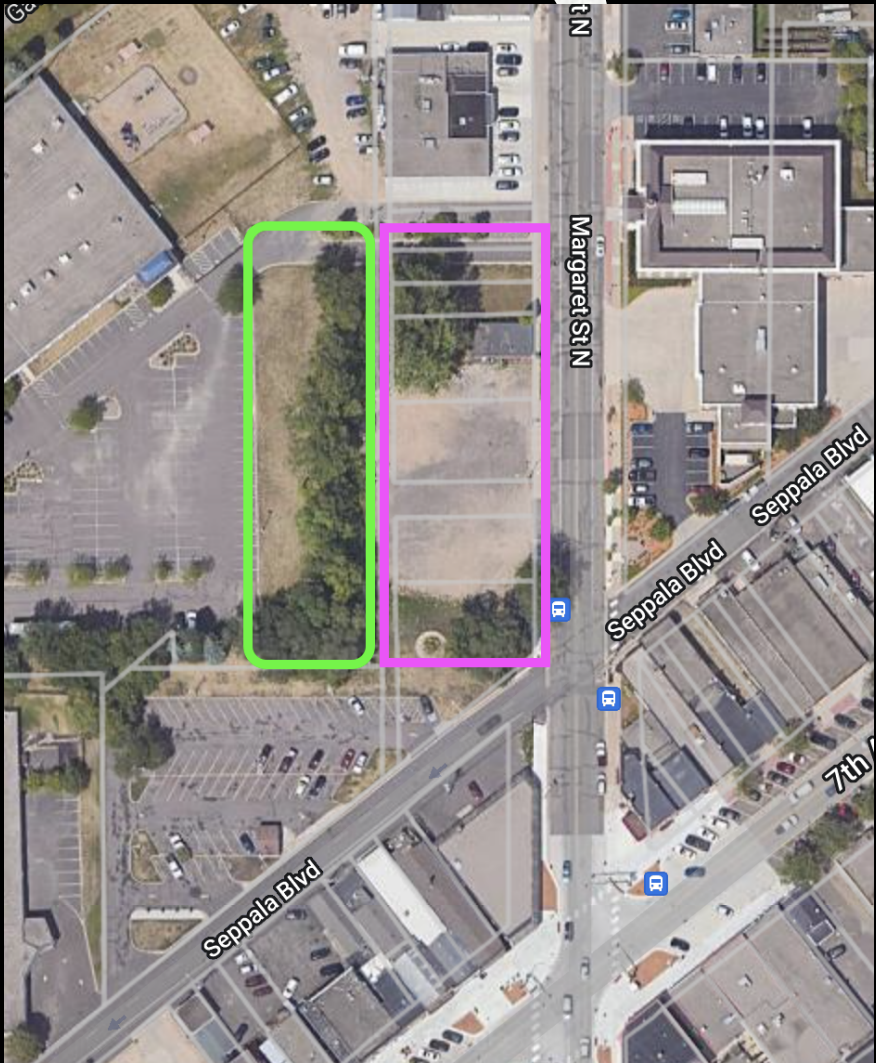
1. Presentation NSTP Garage Condo

Respectfully submitted,
Brandy Howe, Planner



Margaret Street Garage Condo Proposal

Another Quality Mulcahy Development



Site Details

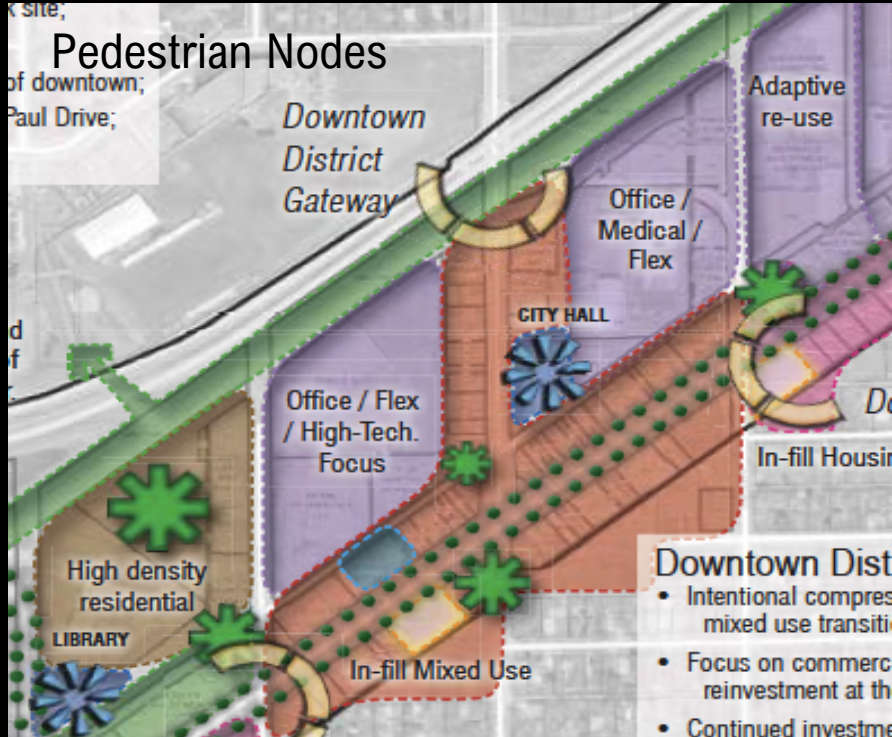
- Approximate size: 1.72 ac (74,827 sqft +/-)
- City Owned Land : 40,835 sqft.
- Gary Mulcahy Land: 33,992 sqft. (cross parking easement not included)
- Proposed 28,000 sqft. under roof, in 2 buildings





**Concept and Community
Connections: Creating, by
Investment, an addition to
the Downtown neighborhood**

Connecting to :



Case Study: Thematic Connections

When a local district gains a reputation for a specialized product niche or feature, it can attract visitors from broad areas. Such specialized niches usually evolve over time; examples include areas known for furnishings, brewpub/micro brew, bike shop and or other active sporting goods specialty stores. For North Saint Paul, such specialties may emerge in relation to existing distinguishing features such as car shows, antique auctions, building trades, the Gateway Trail, or others.

Encourage creative solutions when developing theme or niche developments. Bruno Silikowski turned his love of cars into a development opportunity in Chanhassen, MN. Silikowski began building and selling "Car Condominiums," garages with an upscale finishes, room to store vehicles, and a clubhouse. He found a market for motorsport enthusiasts, providing them a place to get together, talk about cars, and show off their vehicles. The site is now 97% full, having grown through the most recent recession.

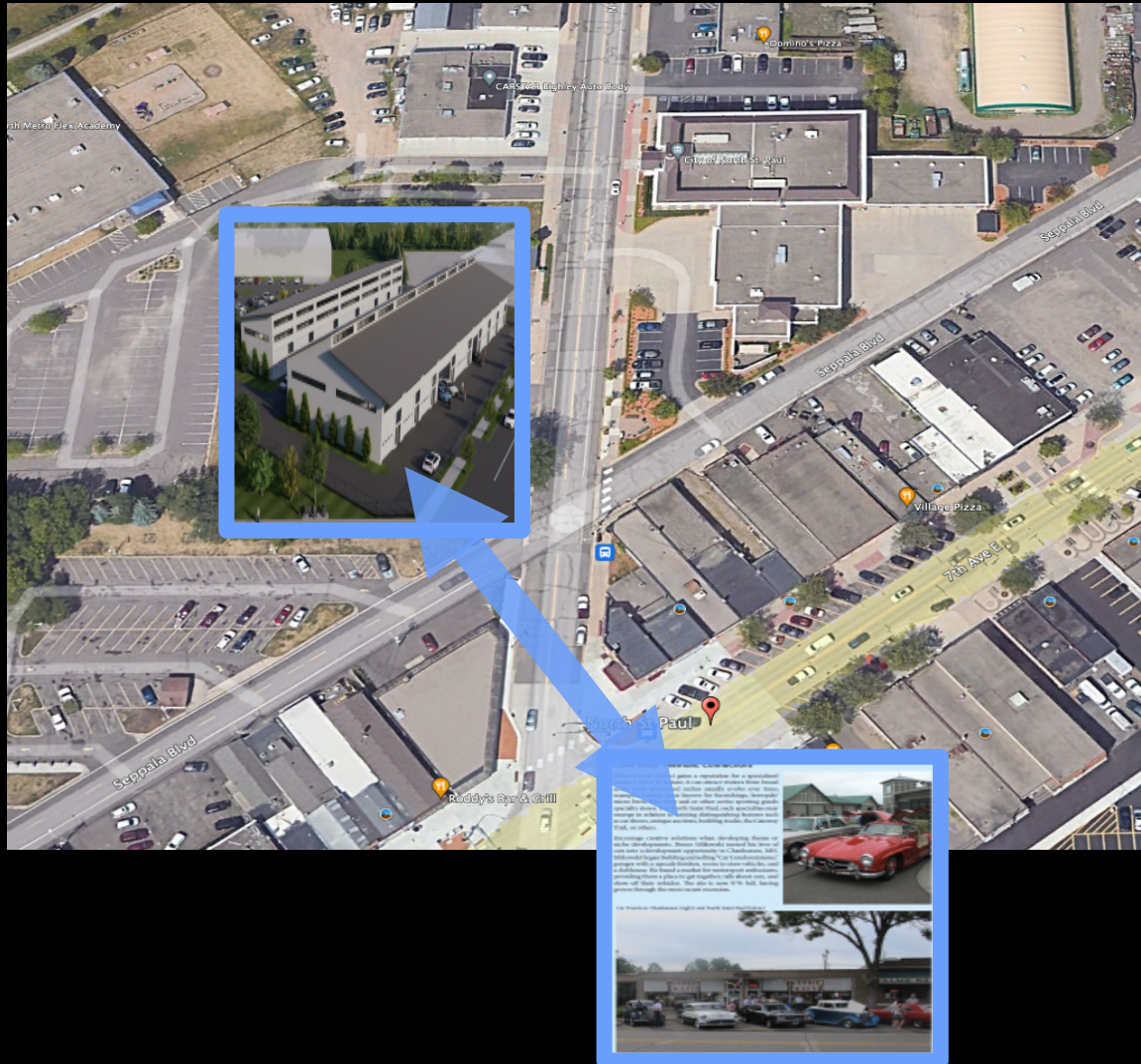
Car Show

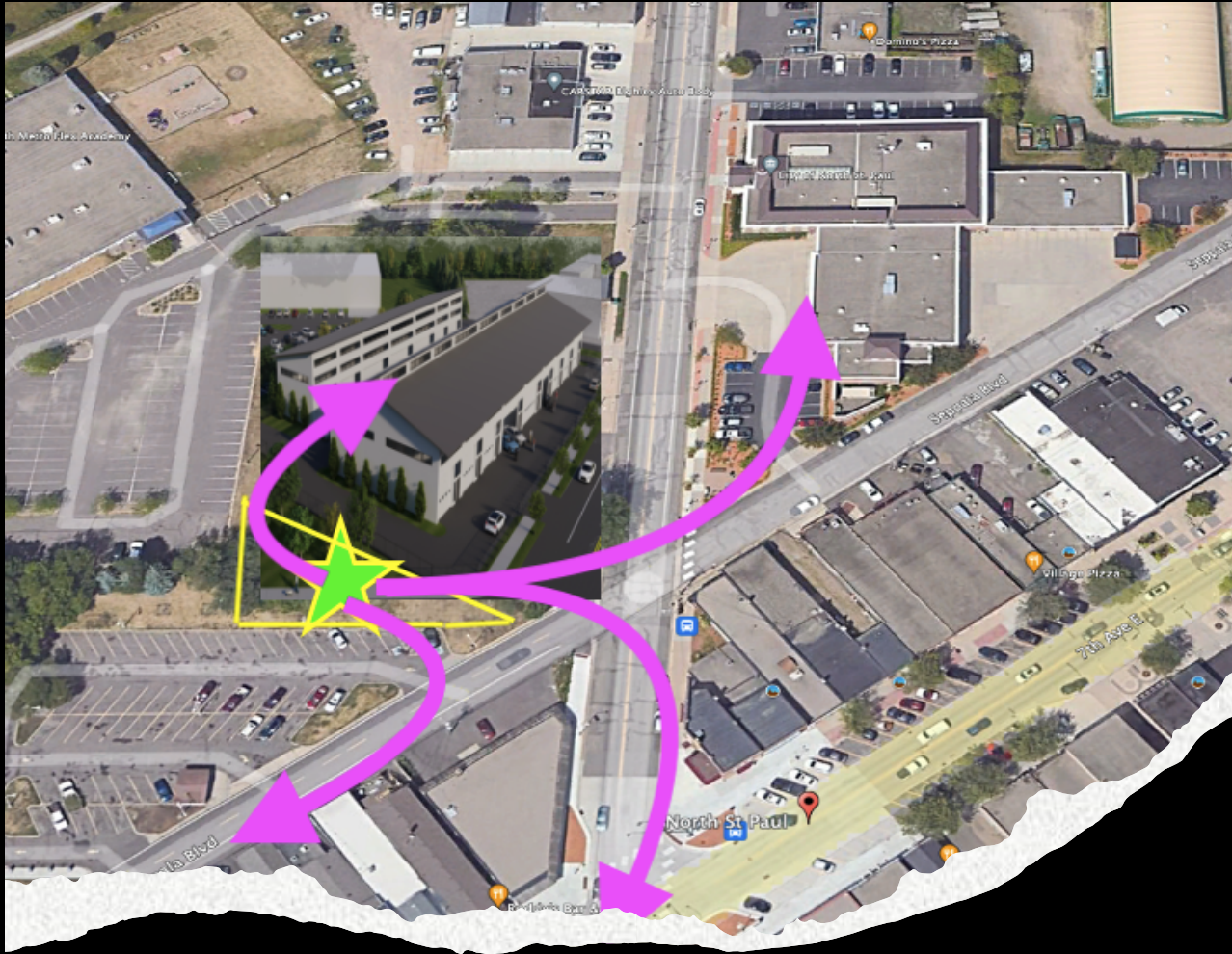


Car Events in Chanhassen (right) and North Saint Paul (below)



Car Show Connection



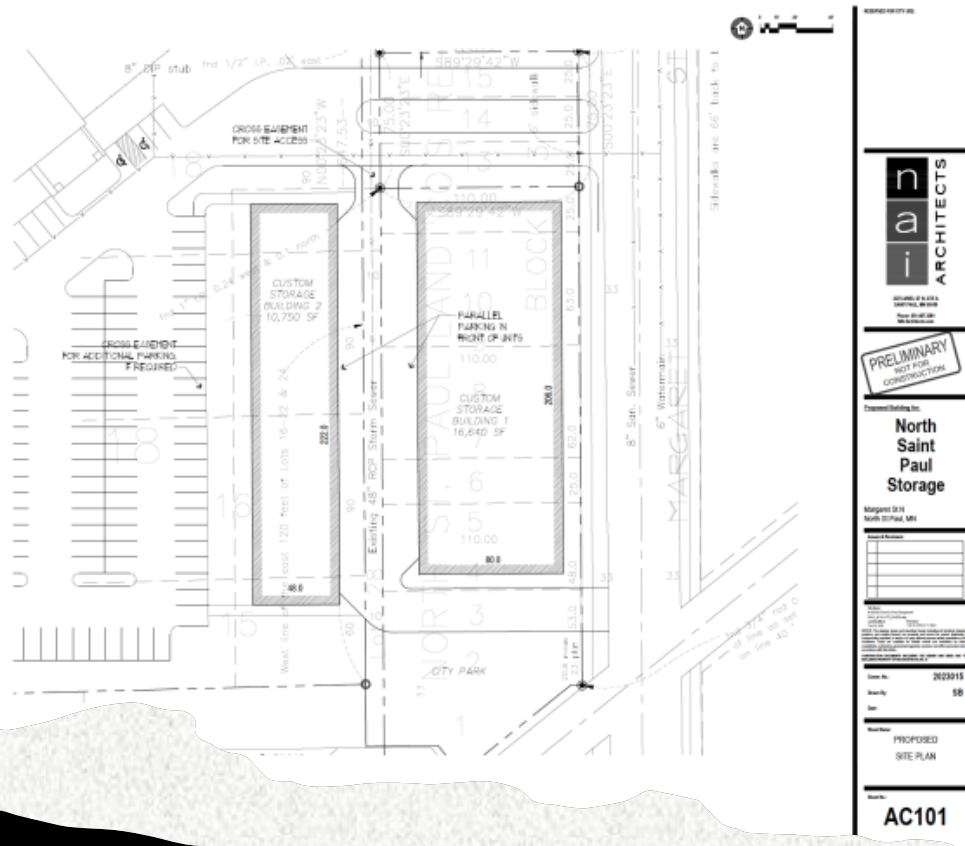


Pedestrian Connections: Green Space Pedestrian Node

Garage Condo examples/Ideas :

- * **Small Business**
- * **Car/Hobby Garage**
- * **Flexible Sizes**





Proposed Site Plan



Garage Condo Community guidelines

- No overnight parking in the driveways
- No residency
- Association by Condominium
- Community maintained infrastructure
- Restriction on hazardous materials
- Secured access to Garages



To	Date
Honorable Mayor Monge and City Council	September 19, 2023

Agenda Placement # IV.B

Topic(s)

Subject

Tobacco Ordinance

Background/Facts

North St. Paul's commercial tobacco ordinance is in need of updating to reflect state and federal laws and a changing landscape of tobacco products. The North St. Paul Police Department requested an updated ordinance be drafted with guidance from the Association for Nonsmokers-MN (ANSR) and the Public Health Law Center (PHLC) at Mitchell Hamline School of Law.

Key components to meet state and federal standards include: updating the ordinance's purpose section; amending or adding definitions of terms such as movable place of business, smoking, and child-resistant packaging, as well as adding definitions for new nicotine/tobacco products and devices; raising the legal age for tobacco sales to 21; increasing the minimum penalty structure; ending self-service; and updating language around compliance checks.

Neighboring communities have incorporated other public health best practices in their commercial tobacco ordinances, including restricting the sale of flavored tobacco products, capping the number of tobacco licenses, setting distance requirements between retail establishments and youth-oriented facilities, and regulating emerging nicotine products. These measures will be highlighted and open for discussion as the ordinance is updated.

ANSR has worked with North St. Paul Police Department for 20+ years to limit youth access to tobacco products and implement public health best practices.

Recommended Action

Attachments

1. NSP_CHAPTER 118-Tobacco Ordinance_With Redlining_7-27-2023 RCAL edits_8-17-2023 WA edits
2. NSP_CHAPTER 118-Tobacco Ordinance_Clean Copy_8-17-2023
3. End-the-Sale
4. Ecigs3.0 fact sheet-draft update 11-2-22
5. Environmental-Impacts-of-Commercial-Tobacco-FINAL

6. MN Flavored tobacco restrictions map 8.9.23
7. Flavored Tobacco Products Factsheet April 2023

Respectfully submitted,

CHAPTER 118: TOBACCO REGULATIONS

Section

- 118.01 Purpose and intent
- 118.02 Definitions
- 118.03 License
- 118.04 Fees
- 118.05 Basis for denial of license
- 118.06 Prohibited sales
- ~~118.07 Self-service sales~~
- 118.08 Responsibility
- 118.09 Compliance checks and inspections
- 118.10 Other ~~illegal-prohibited~~ acts
- 118.11 Exceptions and defenses

-
- 118.99 Violations and penalty

§ 118.01 PURPOSE AND INTENT.

Because the city recognizes that sale of many persons under the age of 18 years purchase or otherwise obtain, possess and use tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery devices licensed products to persons under the age of 21, and the sales, possession, and use are violations of both state and federal laws; and because studies, which the city hereby accepts and adopts, have shown that most smokers begin smoking before they have reached the age of 18 years, and that almost no one starts smoking after age 25; and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and because marketing analysis, public health research, and commercial tobacco industry documents reveal that tobacco companies have used menthol, mint, fruit, candy, and flavors as a way to target youth and young adults and that the presence of such flavors can make it more difficult to quit; 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 chapter shall be intended to regulate the sale, possession and use of tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery devices licensed products for the purpose of enforcing and furthering existing laws, to protect minors youth and young adults against the serious effects associated with the illegal use of tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery devices licensed products, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in M.S. § 144.391, as it may be amended from time to time.

Commented [CR1]: If changes are adopted, this index would need to be updated to reflect any changes.

Commented [WA2]: Updating the Purpose and Intent section to support T21 and Flavors policies.

(Am. Ord. 720, passed 1-3-13)

§ 118.02 DEFINITIONS.

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

CHILD-RESISTANT PACKAGING. Packaging that meets the definition set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, and was tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.

Commented [WA3]: This definition of child-resistant packaging reflects the state definition and is used in the provision below that requires liquids for use in e-cigarettes to be sold in child-resistant packaging which is a state requirement under [Minn. Stat. § 461.20](#).

COMPLIANCE CHECKS. The system the city uses to investigate and ensure that those authorized to sell ~~tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery devices~~ licensed products are following and complying with the requirements of this chapter. **COMPLIANCE CHECKS** shall involve the use of ~~minors as authorized by this chapter~~ persons under the age of 21 who purchase or attempt to purchase licensed products. ~~COMPLIANCE CHECKS shall also mean the use of minors who attempt to purchase tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices 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 ~~tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery devices~~ licensed products.

DELIVERY SALE. 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.

ELECTRONIC DELIVERY DEVICE. 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.

Commented [WA4]: This definition closely reflects the state definition. Minn. Stat. [§609.685 subd. 1\(c\)](#)

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

INDIVIDUALLY PACKAGED. 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. Cartons or other packaging containing more than a single pack or other container as described in this definition shall not be considered **INDIVIDUALLY PACKAGED**.

INDOOR AREA. All space between a floor and a ceiling that is bounded by walls, doorways or windows, whether open or closed, covering more than 50% 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.

LOOSIES. The common term used to refer to a single or individually packaged cigarette, or any other tobacco-licensed product that has been removed from its packaging and sold individually.

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

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

MOVEABLE PLACE OF BUSINESS. Any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and that is not a fixed address or other permanent type of structure licensed for over-the-counter sales transactions.

NICOTINE OR LOBELIA DELIVERY DEVICES. Any product containing or delivering nicotine or lobelia intended for human consumption, whether natural or synthetic, 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, 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.

Commented [WA5]: Some Minnesota jurisdictions have chosen to prohibit the sales for flavored licensed products because such flavored products are specifically targeted to and are attractive to underage persons. This is the definition that is both comprehensive and has been used in numerous jurisdictions.

Commented [AW6]: This definition is used as an umbrella term to capture the long list of products that are regulated under the ordinance. Using an umbrella term improves readability of the ordinance and also ensures that all products intended to be regulated in a provision are addressed. Occasionally jurisdictions that list out all products miss one or two and this creates ambiguity about whether the whole list was intended to be addressed under the provision.

Commented [AW7]: Deleting for clarity and to comport with T21 definitions.

Commented [AW8]: State law prohibits sales from moveable places of business under Minn. Stat. § 461.21. This definition reflects the state requirement and the term is used in the provision below to prohibit such sales.

Commented [AW9]: State law requires licensing jurisdictions to regulate for the sale of nicotine or lobelia delivery products. This definition reflects state law. This verbiage is consistent with State law updates.

RETAIL ESTABLISHMENT. Any place of business where ~~tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices~~ licensed products are available for sale to the general public. The phrase shall include, but not be limited to, grocery stores, convenience stores and restaurants.

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

SELF-SERVICE MERCHANDISING. Open displays of ~~tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices~~ licensed products in any manner where any person shall have access to the ~~tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices~~ 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 ~~tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device~~ licensed product between the customer and the licensee or employee. The phrase shall not include vending machines. **SELF-SERVICE SALES** are interpreted as being any sale where there is not an actual physical exchange of the tobacco between the clerk and the customer.

SMOKING. Inhaling ~~, or exhaling, burning or carrying any smoke from any~~ lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated ~~tobacco or plant 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 ~~a lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product intended for inhalation or using an activated electronic delivery device.~~

Commented [AW10]: This definition of smoking reflects state law and captures the current landscape of "smokeable" products, including heated cigarettes (heat-not-burn products), synthetic nicotine, and marijuana. This definition is used in the provision below to prohibit smoking in all retail establishments.

TOBACCO or TOBACCO PRODUCTS. Any ~~substance product or item~~ containing, made, or derived from ~~tobacco that is intended for human consumption leaf,~~ including but not limited to, cigarettes, cigars, pipe tobacco, snuff, fine cut or other chewing tobacco, cheroots, stogies, perique, granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco, snuff flowers, cavendish, shorts, plug and twist tobaccos, dipping tobaccos, refuse scraps, clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco leaf prepared in a manner as to be suitable for chewing, sniffing, smoking or ingestion by any other means, including dissolvable or absorbable products. **TOBACCO or TOBACCO PRODUCTS** does not include any ~~tobacco product nicotine cessation product that has been approved authorized by the United States Food and Drug Administration to be marketed and 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; "drugs," "devices," or "combination products," as defined in the Federal Food, Drug, and Cosmetic Act.~~

Commented [AW11]: This definition closely reflects the state definition. [Minn. Stat. § 609.685 subd. 1 \(a\).](#)

TOBACCO-RELATED DEVICES. Any tobacco product as well as a pipe, rolling papers, ashtray or other device intentionally designed or intended to be used ~~in a manner which enables the chewing, sniffing, smoking, or ingestion by any other means of tobacco or tobacco with licensed products.~~ **TOBACCO-RELATED DEVICES** ~~do not include 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; components of tobacco-related devices or tobacco products,~~

Commented [AW12]: This definition closely reflects the state definition. [Minn. Stat. § 609.685 subd. 1 \(b\)](#)

which may be marketed or sold separately. **TOBACCO-RELATED DEVICES** may or may not contain tobacco.

VENDING MACHINE. Any mechanical, electric or electronic, or other type of device which dispenses ~~tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices~~ **licensed products** upon ~~the insertion of money, tokens or other form of payment directly into the machine~~ **payment by any form** by the person seeking to purchase the ~~tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device~~ **licensed product**.

Commented [CR13]: Updated to cover any form of electronic payment or direct payment.

YOUTH-ORIENTED FACILITY. Any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or that primarily sells, rents, or offers services or products that are consumed or used primarily by persons under the age of 21. **YOUTH-ORIENTED FACILITY** includes, but is not limited to, schools, playgrounds, recreation centers, and parks.

Commented [AW14]: Some jurisdictions choose to regulate the distance between tobacco retail establishments and youth-oriented facilities to reduce youth exposure to these harmful, addictive, and deadly products. This provides a definition of the types of facilities intended to be protected under such a provision.

(Am. Ord. 720, passed 1-3-13; Am. Ord. 747, passed 1-19-2016)

§ 118.03 LICENSE.

(A) *License required.* No person shall sell or offer to sell any ~~tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices~~ **licensed products** without first having obtained a license to do so from the city.

(B) *Application.* An application for a license to sell ~~tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices~~ **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 Manager shall forward the application to the City Council for action at its next regularly scheduled City Council meeting. If the City Manager shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

(C) *Action.* The City Council may either approve or deny the license, or it may delay action for a reasonable period of time it deems necessary to complete any investigation of the application or the applicant. If the City Council shall approve the license, the City Manager shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant, along with notice of the applicant's right to appeal the City Council's decision.

(D) *Duration of license.* Unless otherwise specified, a license shall be valid for a year or the part of the year for which it is issued, and shall expire on June 30.

(E) *Revocation or suspension.* Any license issued under this chapter may be revoked or suspended as provided in § 118.99.

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

was issued. ~~No transfer of any license to another location or person shall be valid without the prior approval of the City Council.~~

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

(H) *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 30 days, but no more than 60 days, before the expiration of the current license.

(I) *Issuance as privilege and not a right*. The issuance of a license issued under this chapter 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.

(J) *Smoking*. Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a retail tobacco license. Smoking for the purposes of sampling ~~tobacco, tobacco-related products, or nicotine or lobelia delivery devices~~ licensed products is prohibited.

(K) Maximum number of licenses. The maximum number of licenses issued by the city at any time is limited to [INSERT NUMBER]. When the maximum number of licenses has been issued, the city may place persons seeking licensure on a waiting list and allow them to apply on a first-come, first-served basis, as licenses are not renewed or are revoked. A new applicant who has purchased a business location holding a valid city license will be entitled to first priority, provided the new applicant meets all other application requirements in accordance with this ordinance.

(L) Proximity to youth-oriented facilities. No license will be granted to any person for a retail establishment location that is within [1,000] feet of a youth-oriented facility, as measured by the shortest line from the property line of the space to be occupied by the proposed licensee to the nearest property line of a youth-oriented facility. This restriction does not apply to an existing license holder who has been licensed to sell licensed products in that same location for at least one year before the date this section was enacted into law.

(Am. Ord. 720, passed 1-3-13; Am. Ord. 747, passed 1-19-2016) Penalty, see § 118.99

§ 118.04 FEES.

No license shall be issued under this chapter until the appropriate license fee shall be paid in full. The fee for a license under this chapter shall be as established from time to time by Council ordinance, as it may be amended from time to time.

Penalty, see § 118.99

§ 118.05 BASIS FOR DENIAL OF LICENSE.

(A) Grounds for denying the issuance or renewal of a license under this chapter include, but are not limited to, the following:

- (1) The applicant is under the age of ~~18~~ 21 years.

Commented [CR15]: All licenses should only be issued upon full application or application for renewal. This language offering discretion to the council to approve transfers could be deleted to make clear that no transfers are allowed.

Commented [AW16]: Some jurisdictions have chosen to limit the number of licenses granted. These may be limited to the current number (sometimes reduced overtime through attrition), and some have chosen to cap at zero with an end date for all licensing.

Commented [AW17]: Some communities have chosen to protect youth from exposure to these products by requiring a set distance between them and licensed tobacco retailers.

Commented [CR18]: Fees provide revenue for the administration and enforcement of the ordinance and for retailer and community education. Periodic review and adjustment of licensing fees will ensure that they are sufficient to cover all administration, implementation, and enforcement costs, including compliance checks. Our online Tobacco [Retail Licensing Calculator](#) and our publication, [Retail License Fees](#) (2022), provides more information about retail licensing fees and a license fee checklist.

Commented [AW19]: For consistency to match the minimum legal sales age of 21, the age of a license holder may also be raised to age 21.

(2) The applicant has been convicted within the past five years of any violation of a federal, state or local law, ordinance provision or other regulation relating to ~~tobacco or tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices~~ licensed products.

(3) The applicant has had a license to sell ~~tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices~~ licensed products revoked within the preceding 12 months of the date of application.

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

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

(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.

Commented [AW20]: State law prohibits sales from moveable places of business under [Minn. Stat. § 461.21](#). This definition reflects the state requirement and the term is used in the provision below to prohibit such sales.

~~—(B) However, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license.~~

~~(B)~~ 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 chapter.

Commented [CR21]: This provision introduces discretion to ignore any of the bases for denial. The list of the bases for denial could be absolute and require denial if any of them are met.

(Am. Ord. 720, passed 1-3-13) Penalty, see § 118.99

§ 118.06 PROHIBITED SALES.

~~—It shall be a violation of this chapter for any person to sell or offer to sell any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device. No person shall sell or offer to sell any licensed product:~~

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

Commented [AW22]: State and federal law require that no sales of licensed product be made to a person under age 21. ([Minn. Stat. § 461.12 Subd. 2.](#))

~~i. Verification. Licensees must 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.~~

~~i.ii. Signage. 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.~~

Commented [AW23]: State law requires that the licensee post signage that communicates legal sales age, the age verification requirement, and possible penalties for underage sale. ([Minn. Stat. § 461.12 Subd. 1.](#))

~~(B) By means of any type of vending machine.~~

~~(C) By means of self-service display. All licensed products must be stored behind the sales counter, in a locked case, in a storage unit, or in another area not freely~~

Commented [AW24]: State law prohibits self-service display licensed products except in 21+ tobacco product shops. This prohibition goes further than state law by prohibiting self-service display in all retail establishments. ([Minn. Stat. § 461.18 Subd. 1.](#)) It appears the City already prohibits sales in a separate section, 118.07. For clarity, updating the verbiage and moving into this "prohibited sales" section.

accessible to the general public. Any retailer selling licensed products at the time this ordinance is adopted must comply with this section within 90 days of the effective date of this ordinance.

(D) By means of self-service methods delivery sales, 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 tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device, and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device between the licensee, or the licensee's employee, and the customer. All sales of licensed products must be conducted in person, in a licensed retail establishment, in over-the-counter sales transactions.

(E) By means of loosies as defined in § 118.02.

(EE) -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.

(G) Flavored products. No person shall sell or offer for sale any flavored products.

(H) Liquid packaging. No person shall sell or offer to sell any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device, in packaging that is not child-resistant. Upon request by the city, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

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

(Am. Ord. 720, passed 1-3-13) Penalty, see § 118.99

§ 118.07 SELF-SERVICE SALES

—It shall be unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices licensed products by any means whereby the customer may have access to those 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, tobacco-related device, or nicotine or lobelia delivery device between the licensee, or his or her clerk, and the customer. All tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery devices 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. Any retailer selling tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices licensed products at the time this chapter is adopted shall comply with this section within 90 days following the effective date of this chapter.

Commented [CR25]: This sentence is unnecessary because under state law all retailers (except tobacco products shops) are required to keep products behind the counter.

Commented [AW26]: This provision prohibits all delivery sales of licensed products and requires that all sales must take place over-the-counter at the retail establishment.

Commented [CR27R26]: I would note that Self service display language is moved above. Prohibition on delivery is a separate provision.

Commented [AW28]: State law requires that liquids sold for use in electronic delivery devices must be sold in child-resistant packaging and retailers need proof of the packaging on hand which the jurisdiction may request proof of at any time. [Minn. Stat. 461.20](#).

Commented [AW29]: Incorporating this into the "prohibited sales" section, above.

(Am. Ord. 720, passed 1-3-13) Penalty, see § 118.99

§ 118.08 RESPONSIBILITY.

All licensees under this chapter shall be responsible for the actions of their employees in regard to the sale of ~~tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices~~ licensed products on the licensed premises, and the sale of 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 chapter, state or federal law, or other applicable law or regulation.

(Am. Ord. 720, passed 1-3-13) Penalty, see § 118.99

§ 118.09 COMPLIANCE CHECKS AND INSPECTIONS.

(A) All licensed premises must be open to inspection by authorized city officials or their designees during regular business hours.

(B) From time to time, but at least [twice] 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. 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 years, but less than 18 years, a person at least 17 years of age but under 21 years, to enter the licensed premise to attempt to purchase tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices licensed products. Minors People used for the purpose of compliance checks shall be supervised by city-designated law enforcement officers or other designated city personnel. Minors People used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices licensed products when those 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.

(Am. Ord. 720, passed 1-3-13) Penalty, see § 118.99

§ 118.10 OTHER ILLEGAL ACTS PROHIBITED ACTS.

Commented [AW30]: State law requires one compliance check per year for every retailer to check for underage sales. ([Minn. Stat. 461.12, Subd. 2.](#)) Multiple compliance checks per year are considered best practice and could be conducted for all retailers or could be conducted as a follow up if there are failed compliance checks.

Commented [CR31R30]: I suggest using our updated compliance check language because is it clear about the inspections covering all aspects of the ordinance plus clarifies that parent/guardian consent is only for persons under age 18.

(A) All licensed premises must be open to inspection by authorized city officials or their designees during regular business hours.

(B) From time to time, but at least [twice] 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.

Commented [AW32]: Some jurisdictions have not updated their ordinances since 2020 and still provide penalties for [underage purchase, use, and possession \(PUP\) of licensed products](#). Neither state nor federal law penalizes the attempted or actual possession, use, and purchase (PUP) of licensed products by underage persons. PHLC does not include penalties for underage PUP and only provides non-criminal, non-monetary penalties for the use of false IDs.

At its core, a licensing ordinance is intended to regulate the behavior of licensees. Penalizing underage persons detracts from the focus of the licensing code and siphons enforcement resources away from the licensees to young consumers, many of whom are addicted to nicotine. This comment is a reminder to repeal these PUP provisions to align with state law, which no longer includes penalties for PUP.

Unless otherwise provided, the following acts ~~shall be a~~ are an administrative violation of this chapter:

(A) ~~Illegal sales.~~ It shall be a violation of this chapter for any person to sell or otherwise provide any tobacco, tobacco product, tobacco-related devices, or nicotine or lobelia delivery devices to any minor. Prohibited furnishing procurement. It is a violation of this chapter for any person 21 years of age or older to purchase or otherwise obtain any licensed product on behalf of a person under the age of 21. It is also a violation for any person 21 years of age and older to coerce or attempt to coerce a person under the age of 21 to purchase or attempt to purchase any licensed product

—(B) ~~Illegal possession.~~ It shall be a violation of this chapter for any minor to have in his or her possession any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device. This division (B) shall not apply to minors lawfully involved in a compliance check.

—(C) ~~Illegal use.~~ It shall be a violation of this chapter for any minor to smoke, chew, snuff or otherwise use any tobacco, tobacco product, tobacco-related devices, or nicotine or lobelia delivery devices.

—(D) ~~Illegal procurement.~~ It shall be a violation of this chapter for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device, and it shall be a violation of this chapter for any person to purchase or otherwise obtain those 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 tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device. This division (D) shall not apply to minors lawfully involved in a compliance check

(~~BE~~) Use of false identification. It shall be a violation of this chapter for any ~~minor person to attempt to disguise his or her true age by the use any form 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.

(Am. Ord. 720, passed 1-3-13) Penalty, see § 118.99

§ 118.11 EXCEPTIONS AND DEFENSES.

(A) Religious, spiritual, or cultural ceremonies or practices. Nothing in this chapter shall prevent the providing of ~~tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices~~ licensed products tobacco or tobacco-related devices to any ~~minor person~~ as part of a lawfully recognized religious, spiritual or cultural ceremony.

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

Commented [AW33]: State law allows an administrative penalty for individuals who furnish licensed products to a person under age 21. ([Minn. Stat. 461.12, Subd. 3.](#)) This provision protects underage youth by penalizing any person over the age of 21 who furnishes license products to an underage person and the provision allows punishment for coercion of underage person to purchase products.

Commented [AW34]: State law allows penalties for persons using false ID to purchase tobacco products but limits penalties for such violations to non-monetary, non-criminal civil penalties. ([Minn. Stat. § 461.12 Subd. 4.](#))

Commented [CR35]: Our exception specifies that it only applies to tobacco or tobacco-related devices, because arguably, no ceremony would involve e-cigs or nic/lobelia products.

(Am. Ord. 720, passed 1-3-13)

§ 118.99 VIOLATIONS AND PENALTY.

(A) Violations.

(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.

(2) *Hearings.* If a person accused of violating this chapter so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

(3) *Hearing Officer.* The city official designated by the City Council shall serve as the hearing officer.

(4) *Decision.* If the hearing officer determines that a violation of this chapter did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under division (B) of this section, 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, those findings shall be recorded and a copy provided to the acquitted accused violator.

(5) *Appeals.* Appeals of any decision made by the hearing officer shall be filed in the district court for the city in which the alleged violation occurred within 10 business days of the date if the date of the decision.

(6) *Misdemeanor prosecution.* Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this chapter.

(7) *Continued violation.* Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(B) Administrative penalties.

(1) *Licensees.* Any licensee found to have violated this chapter, or whose employee shall have violated this chapter, shall be charged an administrative fine of ~~\$200~~ ~~300~~ ~~\$500~~ for a first violation of this chapter; ~~\$400~~ ~~600~~ ~~1000~~ for a second offense at the same licensed premises within a ~~24~~~~36~~-month period plus a three-day suspension of the license; ~~and \$500~~~~1000~~ for a third or subsequent offense at the same location within a ~~24~~~~36~~-month period plus a ten-day suspension of the license. Upon a fourth third violation within a 36-month period from the first violation, the license will be revoked.

(2) *Other individuals.* Other individuals, other than ~~minors~~~~persons under the age of 21~~ regulated by division (B)(3) of this section, found to be in violation of this chapter shall be charged an administrative fee of \$50.

(3) *Minors.* ~~Persons under the age of 21. Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices licensed products, shall be subject to an administrative fine, or may be subject to tobacco-related education classes, diversion programs, community services, or another penalty that the city believes will be~~

Commented [AW36]: This provides a limit as to how long the licensee has to appeal.

Commented [CR37]: State law allows misdemeanor prosecution for a second violation within 5 years of a first violation. This could be updated to reflect state law.

Commented [AW38]: State law ([Minn. Stat. § 461.12 Subd. 2](#)) sets a minimum fine schedule for underage sales and other violations of state law by licensed tobacco retailers: \$300 for a first violation, \$600 for a second violation within 36 months, and \$1,000 for a third or subsequent violation within 36 months. Upon the third or subsequent violation within 36 months of the first violation, state law requires a suspension of at least seven days and allows for license revocation. Jurisdictions may include stronger penalties for licensee violations. The sample language provided in this model includes a longer suspension period for a third violation (30 days) and requires license revocation for repeat offenders (four violations) within 36 months.

Commented [WA39R38]: I updated here to reflect Katie's feedback from the city to increase administrative fines and revoke the license after three violations in a 36-month period.

Commented [AW40]: State law ([Minn. Stat. § 461.12 Subd. 3](#)) permits an administrative fine of \$50 for individuals or employees who sell, give, or furnish licensed products to persons under age 21. This provision allows the jurisdiction to fine an employee or individual for any violation of this ordinance, with the exception of the non-monetary, non-criminal civil penalties provided for using a false ID.

Commented [AW41]: This non-monetary, non-criminal civil alternative penalty reflect state the penalty for underage persons using false ID to purchase licensed products. ([Minn. Stat. § 461.12 Subd. 4](#)).

appropriate and effective. The administrative fine or other penalty shall be established by City Council ordinance, upon the City Council's consultation with interested parties of the courts, educators, parents and children to determine an appropriate penalty for minors in the city. This administrative fine or other penalty may also be as established from time to time by Council resolution, as it may be amended from time to time. Persons under the age of 21 who use a false identification to purchase or attempt to purchase licensed products may only be subject to non-criminal, non-monetary civil penalties or remedies such as tobacco-related education classes, diversion programs, community services, or another non-monetary, civil penalty that the city determines to be appropriate. The City Council will consult with educators, parents, guardians, persons under the age of 21, public health officials, court personnel, and other interested parties to determine an appropriate remedy for persons under the age of 21 in the city in the best interest of the underage person. The remedies for persons under 21 who use a false identification to purchase or attempt to purchase licensed products may be established by ordinance and amended from time to time.

(4) *Misdemeanor*. Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this chapter.

(5) *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 higher or more stringent penalties shall prevail.

(Am. Ord. 720, passed 1-3-13)

Commented [CR42]: Again, state law provides for misdemeanor prosecution for a second violation within 5 years of a first violation. This provision could be updated to restrict state law.

Commented [CR43]: The penalties in state statute are minimum penalties. Local jurisdictions may have higher or more stringent penalties than state law minimums.

CHAPTER 118: TOBACCO REGULATIONS

Section

- 118.01 Purpose and intent
- 118.02 Definitions
- 118.03 License
- 118.04 Fees
- 118.05 Basis for denial of license
- 118.06 Prohibited sales
- 118.08 Responsibility
- 118.09 Compliance checks and inspections
- 118.10 Other prohibited acts
- 118.11 Exceptions and defenses
- 118.99 Violations and penalty

§ 118.01 PURPOSE AND INTENT.

Because the city recognizes that sale of licensed products to persons under the age of 21 violates both state and federal law; and because studies, which the city hereby accepts and adopts, have shown that most smokers begin smoking before they have reached the age of 18 years, and that almost no one starts smoking after age 25; ; and because marketing analysis, public health research, and commercial tobacco industry documents reveal that tobacco companies have used menthol, mint, fruit, candy, and flavors as a way to target youth and young adults and that the presence of such flavors can make it more difficult to quit; 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 chapter shall be intended to regulate the sale, possession and use of licensed products for the purpose of enforcing and furthering existing laws, to protect youth and young adults against the serious effects associated with the illegal use of licensed products, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in M.S. § 144.391, as it may be amended from time to time.

(Am. Ord. 720, passed 1-3-13)

§ 118.02 DEFINITIONS.

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

CHILD-RESISTANT PACKAGING. Packaging that meets the definition set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1,

2015, and was tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.

COMPLIANCE CHECKS. The system the city uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this chapter. **COMPLIANCE CHECKS** shall involve the use of persons under the age of 21 who purchase or attempt to purchase licensed products. **COMPLIANCE CHECKS** may also be conducted by other units of government for the purpose of enforcing appropriate federal, state or local laws and regulations relating to licensed products.

DELIVERY SALE. 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.

ELECTRONIC DELIVERY DEVICE. 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.

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

INDOOR AREA. All space between a floor and a ceiling that is bounded by walls, doorways or windows, whether open or closed, covering more than 50% 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.

LOOSIES. The common term used to refer to a single or individually packaged cigarette, or any other licensed product that has been removed from its packaging and sold individually. **LICENSED PRODUCTS.** The term that collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

MOVEABLE PLACE OF BUSINESS. Any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and that is not a fixed address or other permanent type of structure licensed for over-the-counter sales transactions.

NICOTINE OR LOBELIA DELIVERY DEVICES. Any product containing or delivering nicotine or lobelia intended for human consumption, whether natural or synthetic, 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.

RETAIL ESTABLISHMENT. Any place of business where licensed products are available for sale to the general public. The phrase shall include, but not be limited to, grocery stores, convenience stores and restaurants.

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

SELF-SERVICE MERCHANDISING. 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 product between the customer and the licensee or employee. The phrase shall not include vending machines. **SELF-SERVICE SALES** are interpreted as being any sale where there is not an actual physical exchange of the tobacco between the clerk and the customer.

SMOKING. Inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, pipe, hookah, 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.

TOBACCO or TOBACCO PRODUCTS. Any product containing, made, or derived from tobacco that is intended for human consumption, including but not limited to, cigarettes, cigars, pipe tobacco, snuff, fine cut or other chewing tobacco, cheroots, stogies, perique, granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco, snuff flowers, cavendish, shorts, plug and twist tobaccos, dipping tobaccos, refuse scraps, clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco leaf prepared in a manner as to be suitable for chewing, sniffing, smoking or ingestion by any other means, including dissolvable or absorbable products. **TOBACCO or TOBACCO PRODUCTS** does not include any nicotine cessation product that has been authorized by the United States 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-RELATED DEVICES. Any tobacco product as well as a pipe, rolling papers, ashtray or other device intentionally designed or intended to be used with licensed products. **TOBACCO-RELATED DEVICES** include components of tobacco-related devices or tobacco products, which may be marketed or sold separately. **TOBACCO-RELATED DEVICES** may or may not contain tobacco.

VENDING MACHINE. Any mechanical, electric or electronic, or other type of device which dispenses licensed products upon payment by any form by the person seeking to purchase the licensed product.

YOUTH-ORIENTED FACILITY. Any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or that primarily sells, rents, or offers services or products that are consumed or used primarily by persons under the age of 21. **YOUTH-ORIENTED FACILITY** includes, but is not limited to, schools, playgrounds, recreation centers, and parks.

(Am. Ord. 720, passed 1-3-13; Am. Ord. 747, passed 1-19-2016)

§ 118.03 LICENSE.

(A) *License required.* No person shall sell or offer to sell any licensed products without first having obtained a license to do so from the city.

(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 Manager shall forward the application to the City Council for action at its next regularly scheduled City Council meeting. If the City Manager shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

(C) *Action.* The City Council may either approve or deny the license, or it may delay action for a reasonable period of time it deems necessary to complete any investigation of the application or the applicant. If the City Council shall approve the license, the City Manager shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant, along with notice of the applicant's right to appeal the City Council's decision.

(D) *Duration of license.* Unless otherwise specified, a license shall be valid for a year or the part of the year for which it is issued and shall expire on June 30.

(E) *Revocation or suspension.* Any license issued under this chapter may be revoked or suspended as provided in § 118.99.

(F) *Transfers.* All licenses issued under this chapter 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) *Display*. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

(H) *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 30 days, but no more than 60 days, before the expiration of the current license.

(I) *Issuance as privilege and not a right*. The issuance of a license issued under this chapter 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.

(J) *Smoking*. Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a retail tobacco license. Smoking for the purposes of sampling licensed products is prohibited.

(K) *Maximum number of licenses*. The maximum number of licenses issued by the city at any time is limited to [INSERT NUMBER]. When the maximum number of licenses has been issued, the city may place persons seeking licensure on a waiting list and allow them to apply on a first-come, first-served basis, as licenses are not renewed or are revoked. A new applicant who has purchased a business location holding a valid city license will be entitled to first priority, provided the new applicant meets all other application requirements in accordance with this ordinance.

(L) *Proximity to youth-oriented facilities*. No license will be granted to any person for a retail establishment location that is within [1,000] feet of a youth-oriented facility, as measured by the shortest line from the property line of the space to be occupied by the proposed licensee to the nearest property line of a youth-oriented facility. This restriction does not apply to an existing license holder who has been licensed to sell licensed products in that same location for at least one year before the date this section was enacted into law.

(Am. Ord. 720, passed 1-3-13; Am. Ord. 747, passed 1-19-2016) Penalty, see § 118.99

§ 118.04 FEES.

No license shall be issued under this chapter until the appropriate license fee shall be paid in full. The fee for a license under this chapter shall be as established from time to time by Council ordinance, as it may be amended from time to time.

Penalty, see § 118.99

§ 118.05 BASIS FOR DENIAL OF LICENSE.

(A) Grounds for denying the issuance or renewal of a license under this chapter include, but are not limited to, the following:

(1) The applicant is under the age of 21 years.

(2) The applicant has been convicted within the past five years of any violation of a federal, state or local law, ordinance provision or other regulation relating to licensed products.

(3) The applicant has had a license to sell licensed products revoked within the preceding 12 months of the date of application.

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

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

(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.

(B) 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 chapter.

(Am. Ord. 720, passed 1-3-13) Penalty, see § 118.99

§ 118.06 PROHIBITED SALES.

No person shall sell or offer to sell any licensed product:

(A) To any person under the age of 21 years.

i. Verification. Licensees must 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.

ii. Signage. 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.

(B) By means of any type of vending machine.

(C) By means of self-service display. 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 delivery sales. All sales of licensed products must be conducted in person, in a licensed retail establishment, in over-the-counter sales transactions.

(E) By means of loosies as defined in § 118.02.

(F) 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.

(G) Flavored products. No person shall sell or offer for sale any flavored products.

(H) Liquid packaging. No person shall sell or offer to sell any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device, in packaging that is not child-resistant. Upon request by the city, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

(I) By any other means, to any other person, in any other manner or form prohibited by federal, state or other local law, ordinance provision or other regulation.

(Am. Ord. 720, passed 1-3-13) Penalty, see § 118.99

(Am. Ord. 720, passed 1-3-13) Penalty, see § 118.99

§ 118.08 RESPONSIBILITY.

All licensees under this chapter shall be responsible for the actions of their employees in regard to the sale of licensed products on the licensed premises, and the sale of an item by an employee shall be considered a sale by the 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 chapter, state or federal law, or other applicable law or regulation.

(Am. Ord. 720, passed 1-3-13) Penalty, see § 118.99

§ 118.09 COMPLIANCE CHECKS AND INSPECTIONS.

(A) All licensed premises must be open to inspection by authorized city officials or their designees during regular business hours.

(B) From time to time, but at least [twice] 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.

(Am. Ord. 720, passed 1-3-13) Penalty, see § 118.99

§ 118.10 OTHER PROHIBITED ACTS

Unless otherwise provided, the following acts are an administrative violation of this chapter:

(A) *Prohibited furnishing procurement.* It is a violation of this chapter for any person 21 years of age or older to purchase or otherwise obtain any licensed product on behalf of a person under the age of 21. It is also a violation for any person 21 years of age and older to coerce or attempt to coerce a person under the age of 21 to purchase or attempt to purchase any licensed product

(B) *Use of false identification.* It shall be a violation of this chapter for any person to use any form of a false 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.

(Am. Ord. 720, passed 1-3-13) Penalty, see § 118.99

§ 118.11 EXCEPTIONS AND DEFENSES.

(A) Religious, spiritual, or cultural ceremonies or practices. Nothing in this chapter shall prevent the providing of tobacco or tobacco-related devices to any person as part of a lawfully recognized religious, spiritual or cultural ceremony.

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

(Am. Ord. 720, passed 1-3-13)

§ 118.99 VIOLATIONS AND PENALTY.

(A) *Violations.*

(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.

(2) *Hearings.* If a person accused of violating this chapter so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

(3) *Hearing Officer.* The city official designated by the City Council shall serve as the hearing officer.

(4) *Decision.* If the hearing officer determines that a violation of this chapter did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under division (B) of this section, 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, those findings shall be recorded and a copy provided to the acquitted accused violator.

(5) *Appeals.* Appeals of any decision made by the hearing officer shall be filed in the district court for the city in which the alleged violation occurred within 10 business days of the date of the decision.

(6) *Misdemeanor prosecution.* Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this chapter.

(7) *Continued violation.* Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(B) *Administrative penalties.*

(1) *Licensees.* Any licensee found to have violated this chapter, or whose employee shall have violated this chapter, shall be charged an administrative fine of \$500 for a first violation of this chapter; \$ 1000 for a second offense at the same licensed premises within a 36-month period plus a three-day suspension of the license. Upon a third violation within a 36-month period from the first violation, the license will be revoked.

(2) *Other individuals.* Other individuals, other than persons under the age of 21 regulated by division (B)(3) of this section, found to be in violation of this chapter shall be charged an administrative fee of \$50.

(3) *Persons under the age of 21..* Persons under the age of 21 who use a false identification to purchase or attempt to purchase licensed products may only be subject to non-criminal, non-monetary civil penalties or remedies such as tobacco-related education classes, diversion programs, community services, or another non-monetary, civil penalty that the city determines to be appropriate. The City Council will consult with educators, parents, guardians, persons under the age of 21, public health officials, court personnel, and other interested parties to determine an appropriate remedy for persons under the age of 21 in the city in the best interest of the underage person. The remedies for persons under 21 who use a false identification to purchase or attempt to purchase licensed products may be established by ordinance and amended from time to time.

(4) *Misdemeanor.* Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this chapter.

(5) *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 higher or more stringent penalties shall prevail.

(Am. Ord. 720, passed 1-3-13)

END THE SALE OF ALL MENTHOL AND FLAVORED COMMERCIAL TOBACCO PRODUCTS

Minnesotans agree: We can do more to prevent kids from becoming addicted

Minnesotans for a Smoke-Free Generation supports ending the sale of all flavored commercial tobacco products – including menthol cigarettes, flavored cigars, e-cigarettes, hookah, and smokeless tobacco – to prevent youth addiction, advance racial and health equity and create a healthier future for everyone.

Every time Big Tobacco addicts another generation of kids to smoking, they put all taxpayers on the hook for billions of dollars in healthcare costs to treat tobacco-related diseases.

FLAVORED PRODUCTS ARE A KEY REASON MINNESOTA IS FACING A YOUTH TOBACCO EPIDEMIC

- In Minnesota, one in seven 11th graders uses e-cigarettes, and 88 percent of those students use flavored e-cigarettes.¹
- More than 70 percent of youth e-cigarette users in Minnesota are showing signs of nicotine dependence.²
- Seven in 10 youth say they use e-cigarettes “because they come in flavors [they] like.”³
- In Minnesota, 78 percent of 8th-graders and 85 percent of 11th-grade tobacco users report they use a flavored product.⁴

FLAVORED PRODUCTS MASK THE HARSHNESS OF TOBACCO, AND ARE LURING KIDS INTO ADDICTION

- The tobacco industry deliberately uses flavors to attract the next generation of tobacco users.⁵
- Today’s popular e-cigarettes contain high levels of nicotine which harms the adolescent brain development and primes youth for addiction.^{6,7}
- Candy and fruit flavored tobacco products mask the harsh taste of tobacco and are often perceived to be “safer,” but the use of such products, including menthol cigarettes, can still lead to cancer, heart disease and chronic pulmonary disease.^{8,9,10,11}
- Flavored hookah products are also targeted at youth. Hookah use is not unique to any community or culture and is becoming increasingly common among young people from many different backgrounds.¹²
- According to doctors and health experts, tobacco use sets kids up for a lifetime of nicotine addiction and serious health conditions like heart disease and cancer.

THE TOBACCO INDUSTRY TARGETS BLACK, LGBTQ+, AMERICAN INDIANS AND YOUNG PEOPLE WITH MENTHOL TOBACCO

- Menthol flavoring makes it easier for kids to start smoking and harder for adults to quit.¹³
- For decades, tobacco companies have channeled menthol tobacco products into Black communities, causing death and disease.^{14,15}
- Nationally, 85 percent of Black people who smoke use menthols, versus 29 percent of white smokers.¹⁵
- The tobacco industry uses menthol to target Black Americans, LGBTQ communities, and youth.^{14,16}
- Among Minnesota teens who smoke, 33 percent report smoking menthol cigarettes.¹⁷
- In Minnesota, smoking rates among American Indians are at epidemic levels (59 percent), and 42 percent of urban American Indians who smoke use menthol cigarettes.^{18,19}

WEAK FEDERAL RULES ALLOW THE TOBACCO INDUSTRY TO USE FLAVORS TO TARGET YOUTH, MINNESOTANS

- FDA’s failure to end all flavored e-cigarette sales has led to dramatic increases among products still available, including a 1000 percent increase in disposable e-cigarette use by high schoolers.²⁰
- Today, disposable e-cigarette Puff Bar is the brand most used by middle and high school e-cigarette users.²¹
- 2.11 million students in the U.S. reported using flavored e-cigarettes, including 1.17 million using mint or menthol.²¹

- The federal government (FDA) has proposed rules that would remove flavored combustible tobacco products, including menthol cigarettes and flavored cigars, from the marketplace. That proposed rule is not finalized and would likely face years of delays from the industry. Minnesota should act now to improve health.²²

ENDING THE SALE OF ALL FLAVORED TOBACCO PRODUCTS WILL REDUCE TOBACCO USE

- Ending the sale of all commercial flavored tobacco products, including menthol cigarettes, flavored cigars, e-cigarettes, hookah, and smokeless tobacco will improve the health of Black communities and other groups targeted by Big Tobacco.^{14,15}
- Among Minnesota menthol smokers, half reported they would quit smoking if menthol cigarettes were no longer sold.²³

- Minnesota communities are leading the way. 25% of Minnesotans are covered by a local ordinance that restrict or prohibit the sale of flavored and/or menthol tobacco products.²⁴
- Studies show that local flavor restrictions reduce the chance that teens will ever try tobacco products.²⁵
- Minnesota's proposal to end flavored tobacco sales has strong bipartisan support.
- These policies are overwhelmingly popular. A 2023 statewide poll found that 62 percent of Minnesotans support the proposal to end the sale of all flavored tobacco products. Support for this policy was high across demographics and regions, including among African Americans (68 percent support) and rural residents (67 percent support).²⁶

¹ Minnesota Department of Health. 2022 Minnesota Student Survey.

² Minnesota Department of Health. 2020 Minnesota Youth Tobacco Survey, 2021

³ U.S. Department of Health and Human Services, Food and Drug Administration, Center for Tobacco Products. Modifications to Compliance Policy for Certain Deemed Tobacco Products Guidance for Industry DRAFT GUIDANCE. 2019.

⁴ Minnesota Department of Health. 2022 Minnesota Student Survey.

⁵ Ritchy AP (RJR Tobacco). Apple Wine Cigarette Project. 1972. <http://legacy.library.ucsf.edu/tid/buq49d00/pdf>.

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⁷ U.S. Department of Health and Human Services. E-Cigarette Use Among Youth and Young Adults: A Report from the Surgeon General. 2016.

⁸ Muthumalage T et al. Inflammatory and oxidative responses induced by exposure to commonly used e-cigarette flavoring chemicals and flavored e-liquids without nicotine. Front Physiol. 2017.

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¹⁰ Allen JG et al. Flavoring chemicals in e-cigarettes: Diacetyl, 2,3-pentanedione, and acetoin in a sample of 51 products, including fruit-, candy-, and cocktail-flavored e-cigarettes. Environ Health Perspect. 2016.

¹¹ Bitzer ZT et al. Effect of flavoring chemicals on free radical formation in electronic cigarette aerosols. Free Radic Biol Med. 2018.

¹² Momenabadi, V., Hossein Kaveh PhD, M., Hashemi, S. Y., & Borhaninejad, V. R. (2016). Factors Affecting Hookah Smoking Trend in the Society: A Review Article. Addiction & health, 8(2), 123–135.

¹³ U.S. Food and Drug Administration. Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes. 2013.

¹⁴ Gardiner PS. The African Americanization of menthol cigarette use in the United States. Nicotine Tob Res. 2004.

¹⁵ Delnevo CD et al. Banning menthol cigarettes: A social justice issue long overdue. Nicotine Tob Res. 2020.

¹⁶ Stevens P et al. An analysis of tobacco industry marketing to lesbian, gay, bisexual, and transgender (LGBT) populations: Strategies for mainstream tobacco control and prevention. Health Promot Pract. 2004.

¹⁷ Minnesota Department of Health. 2020 Minnesota Student Survey: E-cigarette and Cigarette Findings. February 22, 2021.

¹⁸ American Indian Community Tobacco Projects. Tribal Tobacco Use Project Survey, Statewide American Indian Community Report. 2013.

¹⁹ Forster J, Poupart J, Rhodes K, et al. Cigarette Smoking Among Urban American Indian Adults — Hennepin and Ramsey Counties, Minnesota, 2011. MMWR Morb Mortal Wkly Rep. 2016;2016(65):534–537.

²⁰ Wang TW et al. E-cigarette use among middle- and high-school students - United States, 2021. MMWR Morb Mortal Wkly Rep. 2021.

²¹ Cooper M, Park-Lee E, Ren C, Cornelius M, Jamal A, Cullen KA. E-cigarette Use Among Middle and High School Students — United States, 2022. MMWR Morb Mortal Wkly Rep 2022, Notes from the Field.

²² FDA news release. FDA Proposes Rules Prohibiting Menthol Cigarettes and Flavored Cigars to Prevent Youth Initiation, Significantly Reduce Tobacco-Related Disease and Death, April 28, 2022.

²³ D'Silva J et al. Quitting and switching: Menthol smokers' responses to a menthol ban. Tob Regul Sci. 2015.

²⁴ Association for Nonsmokers-Minnesota: <https://www.ansrmn.org/issues-resources/flavored-tobacco/>, updated January 2023.

²⁵ Farley SM, Johns M. New York City flavored tobacco product sales ban evaluation. Tob Control. 2016.

²⁶ The Morris Leatherman Company: Statewide Tobacco Survey, January 18-February 2, 2023.

Our Mission

Minnesotans for a Smoke-Free Generation is a coalition of over 50 organizations that share a common goal of advancing justice by striving toward a future where every person is free from commercial tobacco's harms and can reach their full health potential.

Note: Tobacco in this document refers specifically to the use of manufactured, commercial tobacco products, and not to the sacred, medicinal and traditional use of tobacco by American Indians and other groups.



@smokefreegenMN



/smokefreegenMN



@smokefreegenMN

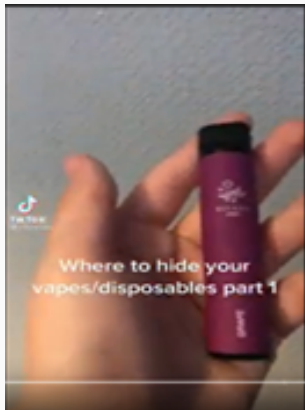
E-CIGS: THE VAPE SAGA CONTINUES

Thousands of flavors, millions addicted

The popularity of youth e-cigarette use (aka vaping) led the U.S. Surgeon General to declare an “epidemic” in 2018.¹ Fueled by reusable pod mod vaping devices and coordinated social media marketing campaigns, particularly by the brand JUUL, vapes have continued to evolve. They now include cheaper, disposable devices that contain even higher nicotine salt levels than reusables and come in countless flavors, shapes and colors. Teens have replaced their JUULs with these even more popular disposable vapes. A critical urgency continues to keep up with a “rapidly dynamic” e-cigarette landscape and related emerging public health challenges of youth e-cigarette use.²



Above: Examples of popular disposables like these can have nicotine equivalents of more than 12 packs of cigarettes per device.

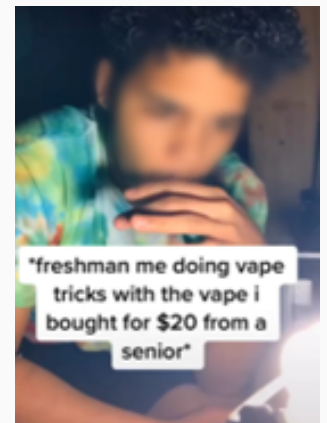


YOUTH ARE DRAWN TO:

the big hit (or buzz) of nicotine

ease of concealability

more than 15,000 available flavors



SO, WHAT'S AN E-CIGARETTE?

E-cigarettes are battery-operated devices that heat a mixture of flavoring, liquid nicotine, and chemicals, called e-juice, which produces a nicotine aerosol that’s inhaled. Whether it’s a pod mod vape, disposable vape, tank mod, or other e-cigarette device, all e-cigarettes are regulated as tobacco products regardless if they contain nicotine extracted from the tobacco plant or developed in a lab (synthetic nicotine).

E-cigarettes are not approved as a quit smoking tool.

FDA-approved quit aids such as gum, patches and lozenges are available for adults at www.QuitPartnerMN.com.

Teens can go to www.MyLifeMyQuit.com for free quit help.



FACT: E-cigarettes are marketed to youth.

The commercial tobacco industry historically targets kids with flavored tobacco. It continues this practice with candy, dessert and fruit flavored e-cigarettes with names like "Unicorn Poop" and "Twinkie." With more than 15,000 available flavors, it's not surprising that more than 8 in 10 youth users vape flavored e-cigarettes.



Back to School vaping promotional email.⁹

FACT: Vape aerosol contains harmful chemicals like nicotine, ultra-fine particles, heavy metals, and other cancer-causing chemicals.³**FACT: Nicotine is highly addictive and can harm brain development.**

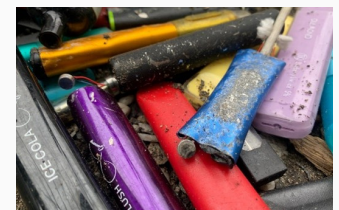
- Nicotine interferes with brain development and can have a long-term effect on mental health.⁴
- The e-liquid flavors in vapes can cause health harms regardless of the nicotine content and can damage your lungs when inhaled.⁵

FACT: Sales of disposable e-cigarettes increased by nearly 250% between February 2020 and September 2021.⁶**FACT: Use remains high among MN youth and signs of dependence have increased.⁷**

- Almost 20% of MN high schoolers and almost 3% of MN middle schoolers reported vaping in the past 30 days, an almost 50% increase since 2014.
- Seventy percent of current MN student users reported signs of dependence like reaching for their vape without thinking about it or feeling like they really need to use it.

FACT: E-cigarettes create plastic, hazardous, and electronic waste.⁸

- Ninety-nine BILLION pounds of e-waste are discarded every year.
- Discarded devices increase single-use plastics and introduce hazardous and toxic chemicals into the environment.



Examples of discarded vapes¹⁰

ENVIRONMENTAL IMPACT OF COMMERCIAL TOBACCO



How does commercial tobacco harm the environment?¹

Let's count the ways:

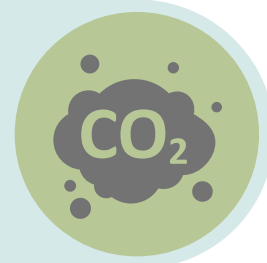


1. Deforestation

Approximately 600 million trees are chopped down each year by the tobacco industry.²

2. Greenhouse Gases

Tobacco burning during the growing and manufacturing process increases greenhouse gas levels by generating water and air pollutants.³

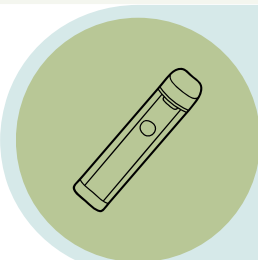


3. Toxic Chemicals

815,985 pounds of toxic chemicals were released into the environment from US tobacco facilities in 2019.⁴

4. Litter

4.2 million cigarette butts were collected on beaches and waterways globally in 2019.⁵



5. Electronic Waste

Americans generated 2.7 million tons of e-waste, including electronic cigarette (vape) waste, in 2018.⁶

What has the tobacco industry done to reduce its environmental impact? Not much.

Instead of taking responsibility for its environmental impact and changing its own behavior, the tobacco industry shifts blame onto the consumer. They promote "green" initiatives without real change or admission of their contribution to climate change (also known as "greenwashing").

"Our best course of action may be maintaining a low profile while working to exempt cigarettes from coverage of pending litter control legislation."

1998 Master Settlement Agreement tobacco industry documents detailing environmental impacts of cigarettes.⁷

It is well established and accepted that the industry's cover up of the health impacts of tobacco were evil, and the environmental cover up is no different. The industry knew tobacco products were harmful to the environment and actively worked to cover it up.



Above: Vuse Alto promoted "green" initiatives being taken for Earth Day such as reducing plastic packaging and reducing shipping CO2 emissions.

Policy solutions include:

- ▶ Sales restrictions;
- ▶ Comprehensive smoking restrictions;
- ▶ Hazardous waste or materials laws; and
- ▶ Educational campaigns.

The policy solutions listed above aim to address some of the sources of the problem - such as the normalization of tobacco use, the availability of products, and patterns of product use.⁷



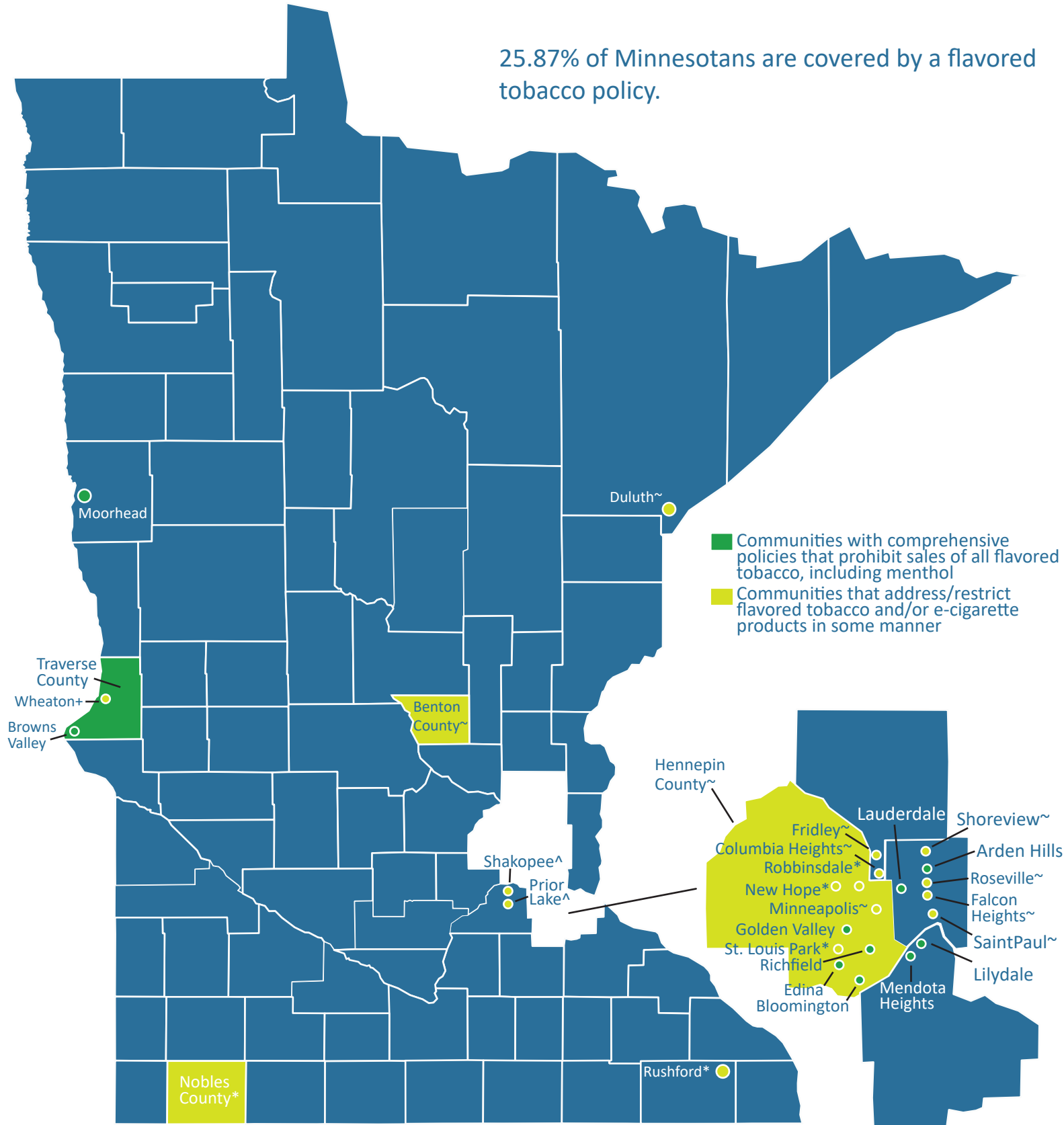
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Minnesota communities addressing the sale of flavored commercial tobacco products

25.87% of Minnesotans are covered by a flavored tobacco policy.





FLAVORED TOBACCO* PRODUCTS

*The term “tobacco” used here, and throughout this fact sheet, refers to commercial tobacco products and not to sacred and traditional use of tobacco by some American Indian communities.



Vape product packaging is available in colorful designs and often resembles popular imagery familiar to youth.



Vapes come in thousands of flavors such as Rainbow Candy (shown above), Blue Raspberry Ice and Cotton Candy



Cheap cigars come in bright packages and a wide variety of flavors, such as grape, strawberry, blueberry, tropical fusion and chocolate/vanilla swirl.



Photo Credit: Trinkets and Trash

WHAT TYPES OF TOBACCO PRODUCTS ARE FLAVORED?

Flavored tobacco products include cigarettes, cigars, chewing tobacco, blunt wraps, electronic cigarettes (aka e-cigarettes or vapes), and shisha (the tobacco used in hookah). These products help the tobacco industry get around the FDA’s 2009 ban of flavored cigarettes other than menthol. Menthol is the only flavor allowed in cigarettes.

WHAT ARE SOME COMMON FLAVORS USED IN TOBACCO PRODUCTS?

There are more than 15,000 e-cigarette flavors on the market including a variety of youth-friendly flavors like *Cereal Milk*, *Bazooka Sour Straws* and *Gummy Worm*. E-cigarettes, specifically disposable vapes, are the most popular tobacco product used by youth.²

Cigars, chewing tobacco, blunt wraps, vapes and shisha are sold in fruit, candy, dessert and novelty flavors. Popular flavors include chocolate, piña colada, apple, grape, berry, cotton candy, bubble gum, mango, mint/ wintergreen and menthol.

These are “truly candy-flavored tobacco products” as the same chemical flavorings used in tobacco products are also used in popular candy and fruity drinks.³

Tobacco companies add menthol to tobacco products to cool the throat and make them taste better.⁴

WHO USES FLAVORED TOBACCO PRODUCTS?

The tobacco industry⁵ uses flavored tobacco to attract the next generation of smokers.

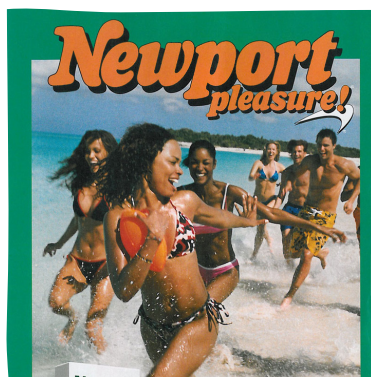
Young people are much more likely to use flavored tobacco products than adults, and most young users said they would no longer use the product if it was not flavored.⁶

In fact, 85 percent of youth who vape use fruit, candy or menthol flavored products.⁷



Nontherapeutic nicotine lozenges, nicotine pouches and nicotine gummies like these pictured above are the second most prevalent nicotine product used by adolescents.

MORE ABOUT MENTHOL FLAVORED TOBACCO



The tobacco industry heavily targets African Americans with menthol tobacco by advertising in popular magazines.



Photo credit: Trickets and Trash



Photo credit: Trickets and Trash



Photo credit: Trickets and Trash

References are available at ansrmn.org/flavors

The tobacco industry has a long history of aggressively targeting certain populations with menthol tobacco marketing including racial and ethnic minority groups, particularly African Americans; youth; women; and LGBTQ+ people.^{9, 10}

HOW DOES THIS IMPACT COMMUNITIES?

Flavored tobacco is a threat to health equity. For example, because of industry targeting, 85% of African American cigarette users smoke menthols.¹⁰ Menthol flavored tobacco is easier to start and harder to quit¹³ than quitting non-menthol cigarettes and African Americans menthol smokers may be even less successful quitting than menthol smokers from other populations.^{14, 15}

Compared to non-menthol, menthol cigarettes are associated with moving to regular smoking among youth and young adults.¹¹ People who identify as lesbian, gay, bisexual or transgender (LGBT) who smoke are more likely to smoke menthol cigarettes than heterosexual people who smoke.¹²

WHAT CAN COMMUNITIES DO ABOUT FLAVORED PRODUCTS?

States and localities can adopt sales restrictions to address menthol cigarettes and other flavored tobacco products that appeal to youth. Six states and more than 170 U.S. localities have banned the sale of all flavored tobacco products including menthol cigarettes.¹⁶ Limiting the sale of products, setting a minimum price or creating a minimum pack size are some of the ways communities can protect their youth by making flavored tobacco products less accessible and less appealing.¹⁷

Despite a 2020 FDA ruling banning the sale of certain pod-based flavored vape products, thousands of flavored vape products were left on the market, including all disposable vapes, the most popular device type used by young people.

The public is waiting for the FDA to act on its April 2022 proposed rule to ban menthol in cigarettes and cigars. While this is a much-needed step for curbing tobacco use, the final ruling will likely take years, and leaves out all other menthol flavored tobacco products.



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last updated:
April 2023

ANSR is dedicated to reducing the human and economic costs of commercial tobacco, nicotine and other drug use in Minnesota.



BEAUTIFUL LIE
UGLY TRUTH
ABOUT MENTHOL TOBACCO
BeautifulLieUglyTruth.org

This publication is made possible by funding from the Minnesota Department of Health's Commercial Tobacco-Free Communities Grant Program.



To	Date
Honorable Mayor Monge and City Council	September 19, 2023
Agenda Placement # IV.C	
Topic(s)	
Subject	
Adult Use Cannabis Legalization	
Background/Facts	
refer to attached memorandum	
Recommended Action	
Attachments	
1. DOCS-#227932-v1-NSP_CANNABIS_MEMO	
2. DOCS-#227934-v1-NSP_CANNABIS_PRESENTATION	

Respectfully submitted,
Jack Brooksbank, City Attorney
Soren Mattick, City Attorney

MEMORANDUM



CAMPBELL KNUTSON
PROFESSIONAL ♦ ASSOCIATION

TO: NORTH ST. PAUL CITY COUNCIL
FROM: JACK BROOKSBANK
SOREN MATTICK
CITY ATTORNEYS
DATE: SEPTEMBER 19, 2023
RE: ADULT USE CANNABIS LEGALIZATION

On May 30, Governor Walz signed 2023 Session Laws Chapter 63 legalizing adult use cannabis in Minnesota. The law created a new chapter of the Minnesota Statutes, Chapter 342. The new law has three main effects. First, it legalizes personal purchase, possession, and use of cannabis and related products by adults over the age of 21. Second, it creates a new administrative agency, the Office of Cannabis Management (OCM), which is tasked with regulating the commercial production and sale of cannabis and related products. Third and finally, the law provides for the expungement of prior convictions for cannabis use and possession. This memorandum provides a brief overview of the new law, with a focus on the role left to municipal government.

This memorandum is meant to be a primer in the new law, and cannot answer every question about these expansive new laws in detail. There is also a great deal of ambiguity left in how the new law will be applied. OCM has been granted substantial rulemaking authority and a mandate to enact regulations to fill out the practical details. However, these rules have not yet been proposed, let alone finalized. If there are any specific questions, feel free to address them to the City Attorney's office. Finally, the law creates a state-level board to process the expungements. Since there will be no involvement by local governments, this memorandum does not address the expungement process.

I. Terminology

The terminology used here is slightly different from prior laws. It uses "cannabis" and not "marijuana," and does not use the prior "cannabinoid product" language. The new law defines "cannabis" as hemp plants with greater than 0.3% THC (dry weight). "Cannabis concentrates" are any extracts or resins prepared from cannabis. "Cannabis flower" means dried cannabis plant used for smoking. "Hemp" means hemp plants with less than 0.3% dry weight of THC. Edible products are regulated by both potency and source of THC. The law redefines the previously-legal edibles (called "edible cannabinoid products" under the 2022 law) as "lower-potency hemp edibles." These must contain less than 5 mg of THC per dose, and the THC must be derived from hemp plants. These edibles can be produced using "hemp concentrate," that is, lower-potency hemp plants will be processed into stronger concentrates, which will then be measured out to make the final product. The original source for these concentrates, however, will have to be from hemp plants and not cannabis.

This memorandum will use "cannabis and related products" to mean cannabis, cannabis concentrate, edible cannabis products, and lower-potency hemp edibles as many of the regulations on use and possession apply to all these categories equally.

II. What Isn't Changed

An important note is that, although the new Minn. Stat. Chapter 342 legalizes cannabis at the state level, there have been no changes to federal law. Under federal law, cannabis (and THC, the active ingredient) remains a schedule I controlled substance. Although federal enforcement has been extremely limited, the conflict between state and federal law remains. And there is always a risk that federal enforcement priorities could shift, even if it does not currently appear to be likely.

This is a particular risk for any city employees who require federal licenses or who carry firearms in the course of their duty. Federal licenses, such as the Class I driver's license required for many public works duties, still classify cannabis use as illegal and as a reasons for license denial or revocation. Further, federal law prohibits cannabis users from purchasing or possessing a firearm. The St. Paul Branch Office of the federal ATF recently released an open letter reaffirming its position that it is illegal for cannabis users to purchase or possess firearms. Thus, although the City likely cannot prohibit cannabis use by employees off the clock, any employee with significant federal exposure should be counselled of the risks. This especially includes police officers and public works employees with class I licenses.

The new law also allows for cannabis drug testing for employees in seven listed categories:

1. Safety sensitive employees
2. Peace officers
3. Firefighters
4. Counselors or careworkers who treat children, vulnerable adults, and those in need of emergency mental health assistance
5. Positions requiring a CDL
6. Positions funded by federal grants; or
7. Any position specifically requiring cannabis drug testing under law.

Although there are no longer criminal penalties associated with its use, city employees in these positions could face employment action if they choose to use cannabis.

III. Adult Purchase, Use, and Possession

Taking effect August 1, adults over the age of 21 are able to purchase, possess, and use cannabis and related products. An individual over 21 may possess no more than 8 grams of cannabis concentrate, edibles with no more than 800 combined mg of THC, not more than 2 ounces of cannabis flower in public, and not more than 2 pounds of cannabis in a private residence. Although purchase and possession will become legal, sale remains illegal. Adults are able to give other adults up to the limit for possession at one time, but may not receive compensation of any form or give cannabis or related products to minors. Individuals may also grow their own cannabis, with a maximum of 8 plants (no more than 4 of which are mature at any time) per residence. Plants must also be kept in an enclosed, locked space that is not open to public view—whether that be indoors or in a locked outdoor enclosure.

The new law also legalizes use in limited circumstances. Use is allowed in private residences, on private property that is not generally open to the public, or on licensed premises. Thus use on public streets or sidewalks, in public parks, or in restaurants is generally not allowed. However, without city action there is likely no penalty for doing so. North St. Paul has adopted an ordinance penalizing smoking cannabis in public, but has not imposed a penalty for using edible products in public.

There are also specific restrictions on use. Smoking cannabis is prohibited anywhere that smoking tobacco is prohibited under the Clean Indoor Air Act, such as inside bars and restaurants. Use and possession is also prohibited in schools and prisons. It is also a crime to use cannabis and related products while in a vehicle, or to operate a vehicle under the influence of cannabis and related products. It is further illegal to possess open packages of cannabis and related products while in a motor vehicle—similar to alcohol, cannabis and related products must be transported in sealed containers or in a part of the vehicle not accessible from the passenger compartment. Finally, it is illegal to use cannabis where “the smoke, aerosol, or vapor would be inhaled by a minor”—though it is not yet clear how this will be interpreted or enforced.

IV. Commercial Regulation

The commercial market for cannabis and related products will be regulated by the new state agency, OCM. The central regulations will involve licensing through the state agency. The law creates 16 different license categories, from cultivation to manufacture to retail. The licenses are also divided between “full strength” cannabis licenses and “lower-potency hemp” licenses.

Medical cannabis will remain its own category and will be regulated separately. The existing medical cannabis regulations will continue largely unchanged and administered by the Department of Health. Regulatory authority will be gradually shifted from the Department of Health to OCM in 2025.

A. Cannabis

The retail sale of cannabis and related products will be divided into “cannabis” and “lower-potency hemp edibles” retail. Cannabis sales are currently legal under state law *only* if the business has a license issued by OCM. However, OCM has not made any licenses available yet. Thus, as a practical matter, there is currently no legal market for cannabis within Minnesota. We have heard that the first licenses will be available in Spring 2025.

Once licenses are available, cannabis will be regulated from seed until final sale under different license types for cultivation, production, distribution, and retail. Cultivation is allowed indoors or out, subject to tight security restrictions and other regulations. However, we have heard from industry figures that the odds of outdoor cultivation are slim to none—apparently indoor cultivation is simply that much more productive. Production is likely to take place in similar industrial-type facilities. There are also two special license types for microbusiness and mezzobusiness that allow for a more vertically integrated model, allowing one business to cultivate, produce, and sell at retail. These businesses will be subject to strict limits on the size of the operation.

General cannabis retail sales will be through separate businesses, analogous to liquor stores (though they are specifically prohibited from selling alcohol, so the two cannot be combined). These businesses will be tightly regulated, particularly with respect to the types of product available. These businesses may sell cannabis and related products, cannabis plants and seeds, paraphernalia, nonalcoholic drinks, books and magazines about cannabis, bags to carry purchases, branded clothing, hemp fiber products, and products that detect the presence of fentanyl. Dispensaries will not be able to sell any other products. Customers may smell the products before purchase, but may not sample or smoke the products on site. It appears there may be some availability to obtain an on-site consumption endorsement on a retail permit, but this would only cover edible products. We will need to wait for draft regulations from OCM to see what this will look like.

Sellers must insure that all purchasers are over the age of 21. Self-serve retail is not allowed. All products must be accurately labeled. Labels, packaging, and products must also not be designed in a manner to appeal specifically to children. For example, products may not use cartoon mascots, flavors that specifically appeal to children, or be modeled after children-specific products. Products may also not be ordinary food products with added THC, and must be packaged in such a way that they do not resemble ordinary food products.

The new statutes also allow for cities to operate municipal cannabis stores. This has the potential to be a powerful regulatory tool, as the City would then be able to dictate what products are available for sale. However, it also presents substantial practical difficulties—for example, many banks and credit card processors will not handle transactions involving cannabis sales due to federal laws and regulations.

B. Hemp

Lower-potency hemp edibles will be separately licensed, and will be subject to similar but less restrictive regulations as cannabis.

Hemp is produced under the Department of Agriculture regulations found in Minn. Stat. Chapter 18K. This process has existed largely without change since 2015. Cultivation, processing, and distribution of hemp will therefore not change (though we reasonably expect that it may expand somewhat given the new demand).

Currently, lower-potency edibles are available under the 2022 “edible cannabinoid products” law. There are no state licenses required under this law. Under the new law, the sale of lower-potency edibles will gradually transition. By October 1, 2023, all businesses selling lower-potency edibles must register with the Minnesota Department of Health (MDH). MDH will also be conducting inspections and compliance checks on registered businesses. This is a new role for MDH, so we are not entirely sure how this process will work. But MDH appears to have hired a group of new employees specifically to conduct these inspections. Then, around March of 2025, the regulatory authority will transition to OCM. At this point, all businesses selling lower-potency edibles must obtain a license from OCM.

Lower-potency retailers must ensure that there are no sales to any individual under 21, but may generally sell any other products as well as lower-potency edibles. Thus a store could sell lower-potency edibles and tobacco or food. Liquor stores will also be allowed to sell lower-potency edibles, such as THC seltzers. There are also license endorsements available to permit lower-potency consumption on-site, within certain limits. This will allow bars and restaurants to serve lower-potency seltzers alongside alcohol. This on-site consumption will be subject to similar restrictions as alcohol service—for example, the service must be in a controlled area and patrons may not bring open products off-site.

V. Municipal Role

The law generally preempts municipal regulation. Cities may not enact their own licensing ordinances or prohibit possession, use, or transportation. Cities also may not prohibit businesses from operating if properly licensed by the state. This limits the control cities can exercise. There are still three areas where cities have authority: zoning, local registration, and enforcement.

1. Zoning

Cannabis use and businesses are still subject to general zoning requirements. For example, home-grown plants must be enclosed, for example in a greenhouse. However, greenhouses will

still be regulated by existing accessory structure regulations. Businesses will be restricted to retail districts. Some communities have specific zoning requirements for liquor stores—we feel this is a good analogy for cannabis businesses, and that cities could decide how to zone cannabis stores specifically. The city could also consider regulating lower-potency sales as an accessory use, restricting sales to certain zoning districts. However, the city may not enact zoning requirements that duplicate or contradict the state license requirements.

Cities are specifically authorized to impose “reasonable restrictions on the time, place, and manner of the operation of a cannabis business.” This includes imposing setbacks from schools, day cares, residential treatment facilities, or “an attraction within a public park that is regularly used by minors” (such as a playground or athletic field). Cities may also impose limited restrictions on the hours of operation. Although not specifically authorized to impose similar regulations on lower-potency hemp edibles sales, cities are also not restricted from regulating hemp in this way. The city could therefore likely also impose similar setbacks and hours of operation restrictions on hemp sales.

During the state licensing application, OCM will contact the city to ensure that the proposed new business complies with all local regulation. This specifically includes building, zoning, and fire codes. The city will also be asked to provide any other information it feels is important. Thus if there is a particular concern with a specific location or an applicant, the city may share that information.

2. *Local Registration*

Any retail business selling cannabis and related products, including the lower-potency hemp edibles, must register with the city in which they operate. No business may sell cannabis or related products without a valid local registration. The city may collect a registration fee to cover the cost of investigation, and may perform initial compliance checks to ensure that the proposed business will follow all applicable regulations. However, the city will not have discretion in whether to issue the registration. If the business has a valid state license, passes the compliance checks, and has paid all fees and taxes, the city *must* issue the registration.

Cities may restrict the number of registrations issued to full strength cannabis retail businesses. The city must issue at least one registration per 12,500 residents. For North St. Paul, this means at least two (2) registrations based on the population recorded in the 2020 census. The city may also decline to issue a registration if there is at least one registration per 12,500 residents countywide. This works out to 44 registrations across Ramsey County. It is not clear how the city will find out the number of registrations in the county; it is likely that OCM will keep a list.

Non-retail businesses, such as cultivation or distribution businesses, will not be required to register with the city. The city will also not be able to restrict the number of licenses or registrations issued for non-cannabis retail businesses. In particular, the city has not been granted authority to restrict the number of businesses selling lower-potency hemp edibles.

3. *Enforcement*

Cities will be required to conduct compliance checks. These are similar to existing compliance checks for liquor and tobacco license holders. They ensure that businesses will not sell products to persons who are underage and do not stock illegal products. OCM has been charged with developing compliance procedures and documentation for use by local departments. There is substantial state money available to support local enforcement efforts, supported by a state sales

tax on all cannabis and related products sales. Compliance checks must be performed at least once per year.

If the city discovers licensing violations, or if a business constitutes “an immediate threat to the health or safety of the public,” the city may suspend the business’s local registration for up to 30 days. The city must notify OCM of the suspension immediately. OCM must then review the action, and may decide to impose a longer license suspension or license termination. If a business continues to sell products despite the suspension, the city may impose a civil penalty of up to \$2,000 per violation (per sale).

The statute contains an appeals mechanism for state licensing actions through OCM. It does not mandate appeals for local actions imposing a less than 30-day suspension. However, potentially shuttering a business for 30 days is still a hefty penalty power. To avoid constitutional due process or takings claims, we recommend that the city adopt a local appeal mechanism.

V. Cannabis Events

The new state statute also allows for cannabis event licenses. This will also be a type of license administered by OCM. This also means that there are currently no available licenses. The first available event licenses will begin in 2025; there will be no cannabis events until at least then. We are also following regulatory developments closely; much of the exact landscape of event licenses will depend on how OCM acts.

Cannabis events are temporary events, lasting no more than four days. These events may take place at designated locations that do not have a permanent license, such as occurring outdoors. However, events must still have controlled access (for example, if outdoors it must be fully fenced). Cannabis events will allow businesses that already have licenses through OCM to sell hemp and cannabis products to sell those products in a different temporary location.

All cannabis events will require “local approval.” Cities may therefore impose requirements on cannabis events, as with other special event permits. However, cannabis events are defined as a “cannabis business” under the new law. Cities are specifically forbidden from prohibiting the operation of cannabis businesses. Cities are most likely not allowed to issue a blanket ban on cannabis events.

On-site consumption at cannabis events can be allowed, but explicitly requires separate local approval. This is different from the approval necessary to hold the event. Denying on-site consumption does not prohibit the operation of the business. Cities may therefore refuse to approve on-site consumption at events.

Minnesota Cannabis Legalization 2023



CAMPBELL KNUTSON
PROFESSIONAL ♦ ASSOCIATION

2023 is the year!*

- Governor Walz signed a bill legalizing cannabis into law on May 30, 2023
 - * However, not all parts of the bill take effect this year
- This presentation provides an overview the legislation
 - Note that there are lots of practical details to be worked out by regulators
 - Several provisions make explicit reference to upcoming regulations



High-Level Plan:

1. Legalize private individual purchase, possession, use, and limited growing
 - Starting August 1
2. Commercial growth, processing, and sales under regulation of new state Office of Cannabis Management (OCM)
 - Starting when rulemaking complete
 - Draft bills said January 1, 2024. Date since removed, and the agency indicates it is targeting first quarter 2025
3. Expungement of convictions under previous laws
 - Handled through BCA and new expungement board, likely limited or no city involvement

NOTE: STILL NO CHANGE TO FEDERAL LAWS

Use

Broadly permits adult (21+) use and possession

- Limits on potency, quantity possessed
- May possess larger amount in home than in public
- May give without payment up to limited amount
- May grow plants at home but may not make concentrates at home



Limited restrictions on use

- May use in private residences, on private property NOT generally open to the public, or at a licensed premises
- Subject to general smoking prohibitions
- May not use or possess open packages in motor vehicle
- May not use or possess in schools or correctional facilities
- May not use where secondhand smoke could affect minors
- May not vaporize or smoke cannabis or hemp in a multi-family building (starting 2025)

City may adopt ordinance making use in public a petty misdemeanor

- Penalty unclear without city action

Use by City Employees

Use is generally legal to all adults. However, the law exempts certain categories of employees as it relates to drug testing:

1. Safety sensitive employees
2. Peace officers
3. Firefighters
4. Counselors or careworkers who treat children, vulnerable adults, and those in need of emergency mental health assistance
5. Positions requiring a CDL
6. Positions funded by federal grants; or
7. Any position specifically requiring cannabis drug testing under law.

Although there are no longer criminal penalties associated, city employees in these positions should refrain from cannabis use.

Office of Cannabis Management

State administrative agency

- Formally created July 1, 2023
- Reporting, agency website, legislation's author all indicate that will be unlikely to start licensing until as late as 2025

Agency will conduct studies and provide reports

- Including recommendations for need to change transportation laws
- Pilot programs for new testing methods
- Use prevalence, adverse events
- Recommendations to reduce use by underage individuals

Responsible for regulating cannabis industry

Will take over medical cannabis program starting March 2025

Commercial Regulation

Cannabis businesses split into categories

- 16 license types
- Split between cultivation, manufacture, distribution, and retail
- Further split between “full strength,” “lower-potency,” and medical

This presentation mainly focuses on retail regulations

Note that cannabis businesses are still subject to general business regulations such as zoning

- A cannabis cultivator is still an agricultural business and regulated as such
- Food and beverage production still requires food handler permits and must contain food-approved ingredients
- Etc.

Retail Sales

Will create separate businesses for cannabis sales

- Think liquor stores
- City may operate own store, like a municipal liquor store, but not exclusively

Subject to State Licensing and Regulation

- Some home growing allowed, but no sales of any products without state license
- Initial license fees and renewal fees
- Restricted on size of operation
 - Maximum number of retail locations
 - Restriction on concurrent licenses held
- Limitation on types of products sold
 - Includes specific restrictions preventing products that appeal to children
- Restriction on display and storage of products
- Compliance requirements
 - Age verification, etc.

State will issue licenses based on demonstrated compliance with regulations and equity score

- Including consideration of applicant, proposed location, and market conditions



What about the current products?

Will remain legal without change for now

Will eventually also be governed by State licensing

- Includes manufacturing, retail
- Exempted from most local control
- Enforcement under MDH until 2025, then transfer to OCM
- Must register with MDH until OCM takes over

May sell other products without restriction

- If have proper licensing, e.g. tobacco
- May sell for on-premises consumption if licensed
 - Extra license endorsement, requires separated designated consumption space



Municipal Regulation

Municipal regulations are generally preempted

- May not ban use, possession, or transportation
- May not prohibit businesses from operating if licensed by the state

So what role is left? Four areas:

1. Zoning
2. Reviewing the application from OCM for code compliance
3. Local Registration
4. Enforcement and compliance

Zoning

Cannabis businesses will simply be another type of legal business, subject to the City's general zoning regulations.

- An explicit condition of obtaining a full-strength retail license will be demonstrating compliance with local zoning regulations.
- Lower-potency sellers are still explicitly directed to comply with zoning code

Note: while the City may choose which zoning districts will allow cannabis businesses, the City cannot *ban* those businesses. The City should therefore designate at least one zoning district allowing cannabis businesses.

Specific Zoning Requirements

May adopt ordinances adopting “reasonable restrictions on the time, place, and manner of the operation of a cannabis business”

- Not entirely clear what this will mean beyond generally applicable zoning and business regulations
- Specifically mentions setbacks:
 - 1000 feet of a school
 - 500 feet from a daycare, residential treatment facility, or “attraction within a public park that is regularly used by minors” like a playground
- Specifically mentions hours of operation
 - Businesses can sell between 10:00 am and 9:00 pm; cannot sell between 2:00 am and 8:00 am (10:00 am Sundays)
 - City may regulate the hours not listed above

Moratorium

Cities may pass a moratorium prohibiting cannabis businesses until January 1, 2025

- Does not apply to hemp, only cannabis

But, cannabis sales are not allowed without a license, and no licenses will be available until likely March 2025

- Passing a moratorium on cannabis may have limited practical effect
- But may still be worth it for added protection in case OCM begins offering licenses earlier than predicted

Licensing Involvement

City will be involved in state licensing process:

- After application, City will be asked to certify if proposed business complies with zoning, fire code, and building code
- City may provide “any additional information it believes is relevant” to application such as concerns about location or specific applicant
- Will be given 30 days to comment

Local Registration

Businesses making retail sales, including low-potency hemp, must register with the city

City must issue registration if

- Applicant has valid state license
- Applicant has paid registration fees
- Applicant passes any initial compliance checks
- Applicant is current on local taxes and assessments

City may impose registration fees for initial registration and registration renewal

- Initial application: lesser of \$500 or half state license fee
- Renewal: lesser of \$1,000 or half of state license fee

City may limit number of full-strength registrations available

- Not fewer than 1 license per 12,500 residents
- May decline registration if one active registration per 12,500 residents *countywide*

Enforcement and Compliance

May make use in public a petty misdemeanor

Cities are responsible for conducting compliance checks assessing:

- Age verification
 - Like with liquor, will do unannounced checks by having an underage person attempt to purchase cannabis
- Operation requirements
 - Types of products sold, hours of operation, age of staff, etc

These compliance checks must be done at least once per year for each license holder

City may also continue to ensure compliance with all local ordinances such as zoning, sign ordinances, snow removal, etc.

Enforcement Powers:

OCM will set up complaint process to report license violations; must give cities “expedited” process, response in less than 1 business day if safety issue

Potential registration suspension:

- If the city determines that a business is in violation of its state license, or
- If the business is “an immediate threat to the health or safety of the public”

City has limited suspension power

- Suspension may be for no longer than 30 days
- Must immediately notify state office
- State may then impose longer license suspension or cancellation
- City may reinstate registration early if problems are addressed
- City may impose civil penalty of up to \$2,000 per violation if business continues to operate during suspension

Appeals: maximum 30-day suspension if City suspension, then becomes State action. But, likely still needs city appeal mechanism to avoid constitutional due process or takings issues

Finance: How is this all being paid for?

Law contains about \$70 million in state appropriations for initial funding

Long term funding by 10% sales tax on all sales

- Comparatively low
- Other states legalizing have started with lower initial rate to quash black market
- Could increase

Of tax money collected:

- 80% to general revenue
- 20% to dedicated local government aid account
 - 50% of this account to counties, 50% to cities
 - Will be distributed based on share of total cannabis businesses located in each city

State Aid/Assistance

State OCM charged with compiling informational reports and setting initial regulations

OCM also tasked with drafting model ordinances for cities

- We expect the office will work closely with the League of Minnesota Cities on these model ordinances
- Will likely cover licensing, enforcement; may not address zoning of business controls as those are more purely local issues

State aid for local law enforcement

- Training for compliance enforcement
- Financial aid for local law enforcement training
 - Impaired driver assessment
 - Field testing/evaluation
 - Drug recognition expert assistance
- State support for enforcement activities

Next steps for the City:

1. Start thinking about zoning:
 - a. Where should cannabis and hemp businesses be located?
 - b. Permitted vs. Conditional or Accessory use
2. Review general regulations
 - a. Loitering
 - b. Smoking in public
 - c. Public nuisance (noise, odor)
3. Business regulations
 - a. Registration
 - b. Time, Place, Manner (hours of operation, distances from schools etc.)
 - c. Number of licenses in city and county
 - d. Fees (up to ½ State fees or \$500 whichever is less)
 - e. Suspension of registration process
 - f. Enforcement/Appeals

Next Steps Cont.

4. Model ordinances from OCM
 - a. We will follow these as they develop
5. Police
 - a. Research available trainings
 - b. Reach out to state associations etc. about potential funding for training
6. Internal Policy
 - a. Amend employee handbook
 - b. Clarify expectations for employees
 - c. Prohibit possession on the clock/on City property, in City vehicles
7. Use Regulations
 - a. Penalty for use in public

Ordinances

1. Zoning Ordinance regarding cannabis businesses
 - Will require notice, public hearing
 - Likely need to permit businesses in at least one zoning district
 - Setbacks
2. Business regulations
 - Likely best to set up new section
 - Set desired maximum number of licenses
 - Hours of operation
 - Distance from certain uses
 - Local registration
 - Compliance checks
 - Registration suspension and appeal
3. Fees
4. Use
 - Penalty for use in public
5. Moratorium (if desired)

Questions?
