

ORDINANCE NO. 68

AN ORDINANCE REGULATING THE SALE, DISTRIBUTION, POSSESSION, AND USE OF TOBACCO, TOBACCO PRODUCTS AND TOBACCO RELATED DEVICES IN THE CITY OF GEM LAKE AND TO PROVIDE PENALTIES FOR VIOLATIONS AND TO REDUCE THE ILLEGAL SALE, DISTRIBUTION, POSSESSION, AND USE OF SUCH ITEMS TO AND BY MINORS.

The City Council of the City of Gem Lake does hereby ordain:

Section 1.

Section 1.1. Authority. This Ordinance is adopted pursuant to authority granted in the United States FDA Tobacco Regulations of 1996 and Minnesota Statutes along with amendments which, from time to time, may be made thereto.

Section 1.2 Purpose and Intent.

Section 1.2.1. The purpose of this Ordinance is to recognize that the sale, distribution, possession, and use of tobacco, tobacco products, and tobacco related devices to Minors under the age of eighteen (18) is in violation of the laws of the State of Minnesota and the United States and to protect and promote the health, safety, and general welfare of the both the general public and minors by recognizing that smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government.

Section 1.2.2. The intent of this Ordinance is to accomplish the purpose through regulation of the sale, distribution, possession, and use of tobacco, tobacco products, and tobacco related devices thus enforcing and furthering existing laws including, but not limited to, Minn Stat. § 144.391.

Section 1.3 Title. This Ordinance shall be known as the "Tobacco Regulation Ordinance" of the City of Gem Lake.

Section 2.

Section 2.1 Interpretation In the interpretation and application of this Ordinance, its provisions shall be held to be minimum requirements and shall not be construed so as to fully effect its purpose and shall not be deemed a limitation or repeal of any other power established by law or Ordinance except as specifically provided herein. In the event that conflicting requirements are imposed by this Ordinance or by other Ordinances of the City of Gem Lake, the more restrictive provisions shall apply.

Section 2.2 Construction of Wording. Words used in the present tense include the past and future tense; the singular includes the plural, and the plural includes the singular; the word "**shall**" is mandatory and the word "**may**" is permissive; the masculine gender includes the feminine.

Section 2.3 Definitions. Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The following terms shall have definitions given to them:

2.3.1. Administrator. The City Clerk or that Person designated by the City Clerk to act on his behalf shall administer this Ordinance.

2.3.2 Applicant. A Person who submits an application to the City for a license to sell Tobacco, Tobacco Products, or Related Tobacco Devices.

2.3.3. Compliance Checks. “Compliance Checks” shall mean the system the City of Gem Lake uses to investigate and ensure that those authorized to sell Tobacco, Tobacco Products, and Tobacco Related Devices are in compliance with the requirements of this Ordinance. Compliance Checks shall involve the use of Minors as authorized by this Ordinance and shall also mean the use of Minors who attempt to purchase Tobacco, Tobacco Products, or Related Tobacco 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 purpose of enforcing appropriate Federal, State, or local laws and regulations relating to Tobacco, Tobacco Products, and Related Tobacco Devices.

2.3.4. Individually Packaged. “Individually Packaged” shall mean the practice of selling any Tobacco or Tobacco Products wrapped individually for sale and 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.

2.3.5 Licensed Premises. The real property upon which a Retail Establishment whose owner or officer, as Licensee, has been authorized under this Ordinance to sell Tobacco, Tobacco Products, or Related Tobacco Devices.

2.3.6. Licensee. “Licensee” shall mean a person who has attained the age of eighteen (18) years, firm, corporation, or other legal entity with a fixed Retail Establishment location in the City of Gem Lake who has been granted a license by the City of Gem Lake Council for a license to sell Tobacco, Tobacco Products, and/or Related Tobacco Devices based upon submittal to the City of a completed application for said license and the fees associated thereto

2.3.7. Loosies. “Loosies” shall mean the common term used to refer to a single or individually packaged cigarette.

2.3.8. Minor. “Minor” shall mean any natural person who has not yet reached the age of eighteen (18) years.

2.3.9. Moveable Place of Business. “Moveable Place of Business” shall mean any form of business operated out of a truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure used for sales transactions.

2.3.10. Person. An individual, partnership, firm, corporation, association, or other legal entity excluding the City of Gem Lake, the state or any other political subdivision or other governmental entity.

2.3.11. Retail Establishment. “Retail Establishment” shall mean any place of business where Tobacco, Tobacco Products, or Related Tobacco Devices are available for sale to the general public and shall include, but not be limited to: grocery stores; convenience stores; bars and lounges; restaurants; gas and service stations.

2.3.12. Sale. “Sale” shall mean any transfer of goods for money, trade, barter, or other consideration.

2.3.13. Self-Service Merchandising. “Self-Service Merchandising” shall mean open displays of Tobacco, Tobacco Products, or Tobacco related Devices in any manner where any person shall have access to said items without the assistance or intervention of the Licensee or an employee of the Licensee, said assistance or intervention entailing the actual physical exchange of Tobacco, Tobacco Products, or Tobacco related Devices between the Licensee or employee of the Licensee.

2.3.14. Self-Service Sales. “Self-Service Sales” shall mean any sale of Tobacco, Tobacco Products, or Tobacco Related Devices where there is not an actual physical exchange of said items between the customer and the Licensee or an employee of the Licensee.

2.3.15. Tobacco or Tobacco Products. “Tobacco” or “Tobacco Products” shall mean any substance or item containing tobacco 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 such manner as to be suitable for chewing, sniffing, or smoking.

2.3.16. Tobacco Related Devices. “Tobacco Related Devices” shall mean any tobacco product as well as pipes, rolling papers, or other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, or smoking of Tobacco or Tobacco Products.

2.3.17. Vending Machine. “Vending Machine” shall mean any mechanical, electric or electronic, or other type of device which dispenses Tobacco, Tobacco Products, or Tobacco Related Devices upon the insertion of money, tokens, or other forms of payment directly into the machine by the person seeking to purchase Tobacco, Tobacco Products, or Tobacco Related Devices.

Section 3.

Section 3.1 License Required. It shall be unlawful for any Person to sell or offer for sale any Tobacco, Tobacco Products or Tobacco Related Devices without first having obtained a license to do so from the City of Gem Lake.

Section 3.2. Application. An application for a license to sell Tobacco, Tobacco Products, or Tobacco Related Devices shall be made on a form provided by the City Clerk of the City of Gem Lake and shall be submitted to the City Clerk along with fees as required by this Ordinance. The application shall contain the full name of the applicant, the applicants title as part of the Retail Establishment, the name of the Retail Establishment for which the license is sought, the applicant’s residential and Retail Establishment addresses and telephone numbers, a complete list of all officers, owners, and/or shareholders of the Retail Establishment and the owners, officers and/or shareholders residential addresses and telephone numbers.

Section 3.2.1. Moveable Place of Business. The City shall not process any application received from a Moveable Place of Business for a license in accordance with this Ordinance and said application shall be immediately returned to the Applicant with a notice that said Applicant is ineligible for a license in accordance with Section 4.1.6 of this Ordinance.

Section 3.3 Procedures for Review of Application. Upon receipt of an application by the City, the Administrator shall employ the following procedures in the issuance of the license:

Section 3.3.1. Complete Application. The City Clerk shall review all information contained in any application received to determine that same is complete and, if found incomplete, shall return the application to the Applicant with notice of the information necessary to make the Application complete.

Section 3.3.2. Investigation. Upon receipt of a complete application, the Administrator shall forward same to the City’s law enforcement agency within seven (7) days for a background investigation of the Applicant and the Retail Establishment and it’s officers and owners, said background investigation to be completed within ten (10) days at which time the results of the background check shall be provided to the Administrator.

Section 3.4. Action. Upon receipt of the background investigation, the Administrator shall advise the City Clerk to place consideration of the Application and approval or denial by the City of Gem Lake Council on the agenda of the next meeting of said Council.

Section 3.5. License Fees. No license shall be issued in accordance with this Ordinance until the appropriate fee shall be paid in full, said fees being as authorized in Minnesota Session Laws 1997, Chapter 227 and as established by the City of Gem Lake Council by resolution and, from time to time, amended.

Section 3.5.1. Partial Term Fees. Fees prescribed for issuance of a license in accordance with this Ordinance shall not be prorated when an application is received at a time that would provide an initial term following approval of less than one (1) calendar year.

Section 3.6. Term of License. All licenses issued under this Ordinance shall be valid for the term of one (1) calendar year commencing on the first day of January and ending on the 31st day of December.

Section 3.6.1. Partial Term. If an original application is received and subsequently approved during a calendar year, the term of license shall not extend beyond the end of the calendar year in which the application was approved.

Section 3.7. Transfers of License. All licenses issued in accordance with this Ordinance shall be valid only on the premises of the Retail Establishment for which the license was issued and only for the person to whom the license was issued. Any change in ownership of the Retail Establishment for which the license was issued shall require submittal of a new Application for license to the City and be subject to the same manner of examination and investigation as an original application.

Section 3.8. License on Display. All licenses issued in accordance with this Ordinance shall be posted and prominently displayed on the premises of the licensed Retail Establishment so as to be in plain view of the general public. A sign not smaller than eight (8") inches by eight (8") inches stating in fonts greater than thirty-six (36) point that "Sales To Or Attempted Purchase Of Tobacco & Related Products By Minors Is Prohibited By Law" shall also be prominently displayed.

Section 3.9. License Renewals. The renewal of a license issued in accordance with this Ordinance shall be handled in the same manner as the original application, except that the application for renewal shall be made at least thirty (30) days and not more than sixty (60) days prior to the expiration of the current license.

Section 3.10. Revocation or Suspension of License. Any license issued in accordance with this Ordinance may be revoked or suspended as provided for in Section 11.1.1 of this Ordinance.

Section 4.

Section 4.1. Basis for Denial of License. The following shall be grounds for denying the issuance or renewal of a license in accordance with this Ordinance; however, except as may be provided by law, the existence of any particular ground for denial does not mean that the City of Gem Lake must deny the license. If a license is mistakenly issued or renewed to a Person, it shall be immediately revoked upon the discovery that the Person was ineligible for the license under this Section.

Section 4.1.1. Minors. No license shall be issued to any Applicant under the age of eighteen (18) years.

Section 4.1.2. Convicted Persons. Licenses may be denied any Applicant who has been convicted within the past five (5) years of any violation of a Federal, State, or local law, ordinance provision, or other regulation relating to Tobacco, Tobacco Products, or Tobacco Related Devices.

Section 4.1.3. License Revocations. A license may be denied any Applicant who has had a license to sell Tobacco, Tobacco Products, or Related Tobacco Devices revoked with the twelve (12) month period preceding the effective date of receipt of Application.

Section 4.1.4. Information. A license may be denied to any Applicant who fails to provide all information required on the Application or who provides false or misleading information on the Application or to City officials.

Section 4.1.5. Prohibited by Others. A license shall be denied any Applicant who is prohibited by Federal, State or other local law, ordinance, or other regulation from holding such a license.

Section 4.1.6. Moveable Place of Business. A license shall be denied any Applicant whose Retail Establishment is a Moveable Place of Business.

Section 5.

Section 5.1. Prohibited Sales. It shall be unlawful for any Person to sell or offer for sale any Tobacco, Tobacco Products, or Related Tobacco Devices as follows:

Section 5.1.1. Sales To Or By Minors. To any person or by any employee or clerk under the age of eighteen (18) years.

Section 5.1.2. Vending Machines. By means of any type of vending machine unless access by Minors to the premises of the licensed Retail Establishment are prohibited by law and the premises of and vending machine in the licensed Retail Establishment are under the direct and constant control of the Licensee or employees of the Licensee who are over the age of eighteen (18) years.

Section 5.1.3. Self-Service Sales and Merchandising. By means of self-service methods as defined in Sections 2.3.3 and 2.3.4 and whereby the customer does not need to make a verbal or written request to the Licensee or an employee of the Licensee, except as defined in Section 6.1.1.

Section 5.1.4. Loosies. By means of Loosies as defined in Section 2.3.7.

Section 5.1.5. Controlled Substances. Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or otherwise controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process.

Section 5.1.6. Other Means. By any other means, to any person, or in any other manner or form prohibited by Federal, State, or other local law, ordinance provision, or other regulation.

Section 6.

Section 6.1. Self-Service Sales. It shall be unlawful for a Licensee under this Ordinance to sell or offer for sale Tobacco, Tobacco Products, or Related Tobacco Devices by any means whereby the customer may have access to such items without having to make a verbal, written, or other request of the Licensee or an employee of the Licensee and whereby there is not a physical exchange of the Tobacco, Tobacco Products, or Related Tobacco Devices between the customer and the Licensee or an employee of the Licensee. All Tobacco, Tobacco Products, and Related Tobacco Devices shall be stored behind a counter, in a case, or other closed storage area not freely accessible to the general public.

Section 6.1.1. Exemptions for Cartons or Multi-Packs. Under State law, the self-service sale of cartons and multi-packs shall be allowed until such time as the FDA regulations take full effect at which time this Section may be repealed.

Section 6.1.2. Exemptions for Restricted Areas. Under State law, the self-service restrictions described in 6.1 shall not apply to Retail Establishments where access by Minors to the premises of the licensed Retail Establishment are prohibited by law and the premises of the licensed Retail Establishment are under the direct and constant control of the Licensee or employees of the Licensee who are over the age of eighteen (18) years.

Section 6.1.3. Other Exemptions. Under State law, the self-service restrictions described in 6.1 shall not apply to Retail Establishments which derive at least ninety (90%) percent of their total revenue from the sale of Tobacco, Tobacco Products, and Related Tobacco Devices and where access by Minors to the premises of the licensed Retail Establishment are prohibited by law.

Section 6.2. Conversion of Premises. Licensees under this Ordinance shall, within sixty (60) days of the effective date of this Ordinance but not later than the 28th day of February in the year 1998 shall bring their licensed premises into compliance with this Section, unless otherwise directed in writing by the Administrator.

Section 7.

Section 7.1. Responsibility. All Licensees under this Ordinance shall be responsible for the actions of their employees in regard to the Sale of Tobacco, Tobacco Products, and Related Tobacco Devices on the premises of the licensed Retail Establishment, and the sale of such an item by an employee shall be considered a sale by the Licensee. Nothing in this Ordinance shall be construed as prohibiting the City from also subjecting the employee of the Licensee to whatever penalties are appropriate under this Ordinance, State or Federal law, or other applicable law or regulation.

Section 8.

Section 8.1. City Compliance Checks and Inspections. From time to time, but not less than once during each term of the license, the City or its authorized agent shall conduct compliance checks by engaging, with the written consent of their parents or guardians, Minors over the age of fifteen (15) years but less than eighteen (18) years, to enter upon the premises of the licensed Retail Establishment and to attempt to purchase Tobacco, Tobacco Products, or Tobacco Related Devices as follows:

Section 8.1.1. Right of Entry. All premises of licensed Retail Establishments shall be open to inspection by the City's law enforcement agency or other authorized City official or agent of the City during regular business hours.

Section 8.1.2. Supervision. Minors used for the purpose of compliance checks shall be supervised by designated law enforcement officers or other authorized personnel of the City.

Section 8.1.3. Hold Harmless. Minors used for the purpose of compliance checks shall not be guilty of the unlawful purchase or attempted purchase nor the unlawful possession of Tobacco, Tobacco Products, or Related Tobacco Devices when such items are obtained or attempted to be obtained as part of a compliance check.

Section 8.1.4. False Identification. No Minor used in a compliance check shall attempt to use a false identification misrepresenting the Minor's age and all Minors engaged in a compliance check shall answer all questions about the Minor's age asked by the Licensee or an employee of the Licensee and shall produce any identification, if any exists, for which the Minor is asked.

Section 8.2. Licensee Notification. Immediately following a compliance check performed in accordance with this Ordinance by the City or its authorized agents, the Licensee shall be notified of the results of the compliance check.

Section 8.3. Inspection by Others. Nothing in this Ordinance 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.

Section 9.

Section 9.1. Other Illegal Acts. Unless otherwise provided for herein, the following acts shall be considered unlawful and in violation of this Ordinance:

Section 9.1.1. Illegal Sales. It shall be unlawful for any person to sell or otherwise provide any Tobacco, Tobacco Product or Related Tobacco Device to any Minor.

Section 9.1.2. Illegal Possession. It shall be unlawful for any minor to have in their possession any Tobacco, Tobacco Product, or Related Tobacco Device unless such Minor is lawfully engaged in a compliance check under this Ordinance.

Section 9.1.3. Illegal Use. It shall be unlawful for any Minor to smoke, chew, sniff, or otherwise use any Tobacco, Tobacco Product, or Related Tobacco Device.

Section 9.1.4. Illegal Procurement. It shall be unlawful for any Minor to purchase or attempt to purchase or otherwise obtain any Tobacco, Tobacco Product, or Tobacco Related Device and it shall be unlawful for any Person to purchase or otherwise obtain such items on behalf of a Minor. Further, it shall be unlawful for any person to coerce or attempt to coerce a Minor to illegally purchase, attempt to purchase, or otherwise obtain or use any Tobacco, Tobacco Product, or Tobacco Related Device. This Section shall not apply to Minors lawfully involved in a compliance check under this Ordinance.

Section 9.1.5. False Identification. It shall be unlawful for any Minor to attempt to disguise their true age by the use of any false form of identification, whether the identification is that of another person or one upon which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

Section 10.

Section 10.1. Violations. The following procedures shall be implemented regarding alleged violations of this Ordinance, should the City elect to proceed with an administrative violation:

Section 10.1.1. Notification of Violation. Upon discovery of an alleged 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 their right to be heard on the accusation.

Section 10.1.2. Hearings. If a Person accused of violating this Ordinance so requests, a hearing before the City of Gem Lake Council shall be scheduled, the time and place of which shall be published and provided to the accused violator.

Section 10.1.3. Findings. If the City of Gem Lake Council finds that a violation of this Ordinance did occur, that decision, along with the Council's reasons for finding a violation and the penalty to be imposed under Section 11. of this Ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. If the Council finds that no violation has occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.

Section 10.1.4. Appeals. Appeals of any Findings made in accordance with Section 10.1.3. shall be filed in Ramsey County district court for the jurisdiction of the City in which the alleged violation occurred.

Section 10.1.5. Misdemeanor Prosecution. Nothing in this Ordinance shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this Ordinance. If the City elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.

Section 10.1.6. Continued Violation. Each violation and every day in which a violation occurs or continues to occur shall constitute a separate violation.

Section 11.

Section 11.1. Administrative Penalties. Any Person who violates the provisions of this Ordinance which prescribe that certain action is unlawful and in violation of this Ordinance shall be subject to the following penalties:

Section 11.1.1. Licensees. Any Licensee and any employee of the Licensee found to have violated this Ordinance shall be charged an administrative fine of Seventy-Five (\$75.00) Dollars for a first violation of this Ordinance; Two-Hundred (\$200.00) Dollars for a second offense at the same premises of the licensed Retail Establishment within a twenty-four (24) month period; and, Two-Hundred Fifty (\$250.00) Dollars and a license suspension of not less than seven (7) days for each subsequent offense at the same premises of a licensed Retail Establishment within a twenty-four (24) month period.

Section 11.1.2. Other Individuals. Other individuals, other than Minors regulated by Section 11.1.3, found in violation of this Ordinance shall be charged an administrative fine of Fifty (\$50.00) Dollars.

Section 11.1.3. Minors. Minors found to have violated this Ordinance shall be subject to an administrative fine of twenty (20) hours of community service approved by the City for a first violation of this Ordinance; and, an administrative fine of forty (40) hours of community service and completion of a tobacco related education or diversion program approved by the City.

Section 11.1.4. Misdemeanor. Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any violation of this Ordinance.

Section 11.2. Criminal Penalties. Any Person who violates any of the provisions of this Ordinance which prescribe that certain action is unlawful and in violation of this Ordinance shall be guilty of a misdemeanor and, upon prosecution and conviction thereof, shall be fined in an amount not to exceed One-Hundred (\$100.00) Dollars or imprisonment of ten (10) days or both for a first violation of this Ordinance; and, fined in an amount not to exceed Two-Hundred Fifty (\$250.00) Dollars or imprisonment up to thirty (30) days or both for each subsequent violation within a twenty-four (24) month period. Each violation and every day in which a violation occurs or continues to occur shall constitute a separate violation.

Section 12.

Section 12.1. Exceptions and Defenses. Nothing in this Ordinance shall prevent the providing of Tobacco, Tobacco Products, or Tobacco Related Devices to a Minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this Ordinance for a person to have reasonably relied upon proof of age as described by State law.

Section 12.2 Separability. It is hereby declared to be the intention of the City of Gem Lake that the provisions of this Ordinance are severable. If any provisions or the application thereof to any Person or circumstances is held to be illegal or invalid, such illegality or invalidity shall not affect other provisions of this Ordinance or the application of said provisions to any other Person not specifically included in said determination. To this end, the provisions of this Ordinance and the various applications thereto are declared to be severable.

Section 13.

Section 13.1 Enactment and Effective Date. This Ordinance No. 68 was adopted by the City Council of the City of Gem Lake on the 23rd day of February in the year 1998 and ordered to be placed in full force and effect upon publication in the City's legal publication, but not later than the 13th day of March in the year 1998.

ATTEST:

Paul R. Emeott

Paul R. Emeott, Mayor

Dated *February 23rd, 1998*

ATTEST:

Frederic C. Magnuson

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Frederic C. Magnuson, City Clerk

Dated *February 23rd, 1998*

file: ordinance/Ordinance68S