

ORDINANCE NO. 98-2

THE COUNCIL OF THE CITY OF ORR, MINNESOTA, HEREBY ORDAINS:

PURPOSE: Because the city recognizes that many persons under the age of eighteen (18) years purchase or otherwise obtain, possess, and use tobacco and such sales, possession, and use are violations of both State and Federal laws, this ordinance shall be intended to regulate the sale, possession, and use of tobacco for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco and to further the official policy of the State of Minnesota in regard to preventing young people from starting to smoke as stated in Minn. Statue 144.391.

1. LICENSE:

- A. No person shall keep for retail sale, sell at retail or otherwise dispose of any tobacco at any place in the City without first obtaining a license from the City. "Tobacco" is defined as and includes: cigarettes, cigars, cheroots, stogies, perique, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine cut and other chewing tobaccos; shorts, refuse scraps, clippings, cuttings and sweeping of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking. [Source: Minnesota Statutes Section 609.685].

B. APPLICATION.

An application for a license to sell tobacco 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 clerk shall forward the application to the council for action at its next regularly scheduled council meeting. If the clerk 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. The council may either approve or deny the license, or it may delay action for such a reasonable period of time as necessary to complete any investigation of the application of the applicant it deems necessary. If the council shall approve the license, the clerk shall issue the license to the applicant. If the 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 council's decision. Any license issued under this ordinance may be suspended as provided in the Administrative Penalties section of this ordinance. All licenses issued under this ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the council. No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this ordinance. The

renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least thirty (30) days but no more than one hundred and twenty (120) days before the expiration of the current license.

The following shall be grounds for denying the issuance or renewal of a license under this ordinance, however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this Section:

1. The applicant is under eighteen (18) years of age.
 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.
 3. The applicant has had a license to sell tobacco revoked within the preceding twelve months of the date of application.
 4. The applicant fails to provide any information required on the application, or provides false or misleading information.
 5. The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license.
- C. The annual license fee for a retail tobacco license shall be fifty dollars (\$50.00) per year. All retail tobacco licenses shall be valid for one calendar year from the date that the license is issued.
- D. Every license shall be conspicuously posted at the place for which the license is issued and shall be exhibited to any person upon request.
2. **SALES PROHIBITED TO MINORS.** No person shall sell or offer to sell any tobacco or tobacco product to any person under eighteen (18) years of age. [Source: Minnesota Statutes Section 609.685].
3. **ADMINISTRATIVE PENALTIES.**
- A. If a licensee sells tobacco to a person under the age of eighteen (18) years, or violates any other provision of this ordinance, the licensee shall be charged an administrative penalty of seventy five dollars (\$75.00). An administrative penalty of two hundred dollars (\$200.00) must be imposed for a second violation at the same location within twenty four (24) months after the initial violation. For a third violation at the same location within twenty four (24) months after the initial violation, an administrative penalty of two hundred and fifty (\$250.00) must be imposed, and the licensee's authority to sell tobacco at that location must be suspended for not less than seven days. No suspension or penalty may take effect

until the licensee has received notice, served personally or by mail of the alleged violation and has had an opportunity for a hearing before the city council. [Source: Minnesota Statutes Section 461.12(2), 1997].

B. A clerk or individual who sells tobacco to a person under the age of eighteen (18) years shall be charged an administrative penalty fee of fifty dollars (\$50.00). No penalty may be imposed until the individual has received notice, served personally or by mail of the alleged violation and has had an opportunity for a hearing before the city council. [Source: Minnesota Statutes Section 461.12(3), 1997]

C. It is an affirmative defense to the charge of selling tobacco to a person under the age of eighteen (18) years in violation of this ordinance that the licensee or individual making the sale relied in good faith upon proof of age as follows:

1. A valid driver's license or identification card issued by the State of Minnesota, another state, 1854 Treaty Authority or a province of Canada, and including the photograph and date of birth of the licensed person; or
2. A valid military identification card issued by the United States Department of Defense; or
3. In the case of a foreign national, from a nation other than Canada, by a valid passport. [Source: Minnesota Statutes Section 461.12(6), 1997; Minnesota Statutes Section 340A.503, by reference].

D. Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase tobacco shall be ordered to perform community services as deemed appropriate by the city council. Tobacco related educational classes, diversion programs and other penalties may be ordered for repeat offenses of this section.

4. SELF-SERVICE SALES.

A. No licensee shall offer for sale single packages of cigarettes or smokeless tobacco in open displays which are accessible to the public without the intervention of a store employee. [Source: Minnesota Statutes Section 461.18(1)(a), 1997].

B. Cartons consisting of at least 10 single packages of cigarettes packaged together may be offered and sold through open displays accessible to the public.

C. Section 4(B) of this ordinance will expire upon the effective date and implementation of Code of Federal Regulations, Title 21, Part 897.16(c). Self service sales will be regulated by Code of Federal Regulations, Title 21, Part 897.16 (c) upon implementation. [Source: Minnesota Statutes Section 461.18(1)(c) and 461.1893), 1997].

D. The self-service restrictions described in this Section 4 shall not apply to retail stores which derive at least ninety percent (90%) of their revenue from tobacco and tobacco-related products and which cannot be entered at any time by persons younger than 18 years of age. [Source: Minnesota Statutes Section 461.18(1)(d), 1997].

5. VENDING MACHINES.

It shall be unlawful to any person licenses under this ordinance to allow the sale of tobaccos by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment. Vending Machines are defined as and include: any mechanical, electrical or electric, or other type of device which dispenses tobacco upon the insertion of money, tokens or other form of payment directly into the machine. The presence of any type of locking device, whether electronic or otherwise, which first must be deactivated by the licensee or an employee of a licensee, shall not exclude a device from being considered a vending machine for the purpose of this ordinance.

6. COMPLIANCE CHECKS. The City shall conduct unannounced compliance checks at least once each calendar year at each location where tobacco is sold to test compliance with Minnesota Statutes Section 609.685. Compliance checks shall utilize minors over the age of fifteen (15), but under the age of eighteen (18), who, with the prior written consent of a parent or guardian, attempt to purchase tobacco under the direct supervision of a law enforcement officer or an employee or agent of the licensing authority. [Source: Minnesota Statutes Section 461.12(5), 1997]

This ordinance shall become effective after its passage and publication.

Dated: July 13, 1998

Rebecca Palmer
City Clerk

David Glowaski
Mayor

Published in the Timberjay on July 18, 1998.