

ORDINANCE NO. 274

AN ORDINANCE RELATING TO THE SALE, POSSESSION, AND USE OF TOBACCO, TOBACCO PRODUCTS, TOBACCO RELATED DEVICES, INCLUDING E-CIGARETTES, IN THE CITY OF BRAHAM, AND TO REDUCE THE ILLEGAL SALE, POSSESSION, AND USE OF SUCH ITEMS TO AND BY MINORS

THE CITY COUNCIL OF THE CITY OF BRAHAM ORDAINS:

**Section 1. Purpose.** Because the City recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, and tobacco related devices, and such sales, possession, and use are violations of both State and Federal laws; and because studies, which are hereby accepted and adopted, have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this ordinance shall be intended to regulate the sale, possession, and use of tobacco, tobacco products, and tobacco-related devices, including E-cigarettes, for the purpose of enforcing and furthering existing laws, to protect minors against serious effects associated with the illegal use of tobacco, tobacco products, and tobacco-related devices, and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke as stated in Minn. Statute 144.391.

**Section 2. Definitions and Interpretations.** The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice-versa. The term "shall" means mandatory and the term "may" means permissive.

Subd. 1 *Tobacco* and *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, inhalation, or smoking.

Subd. 2 *Tobacco-related devices* shall mean any tobacco product as well as a pipe, rolling papers or other device, including an E Cigarette, intentionally designed or intended to be used in a manner which enables the chewing, sniffing, inhalation, or smoking of tobacco or tobacco products.

Subd. 3 *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 the tobacco, tobacco products, or tobacco-related devices, without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product or tobacco-related device between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

Subd. 4 *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 form of payment directly into the machine by any person.

Subd. 5 *Individually packaged* shall mean the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products include but are not limited to single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container shall not be considered individually packaged.

Subd. 6 *Loosies* shall mean the common term used to refer to a single or individually packaged cigarette.

Subd. 7 *Minor* shall mean any natural person who has not yet reached the age of eighteen (18) years.

Subd. 8 *Retail establishment* shall mean any place of business where tobacco, tobacco products, or tobacco-related devices are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, and restaurants.

Subd. 9 *Movable 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 storefront or other permanent type of structure authorized for sales transactions.

Subd. 10 *Sale* shall mean any transfer of goods for money, trade, barter or other consideration.

Subd. 11 *Compliance checks* shall mean the system the City uses to investigate and ensure that those authorized to sell tobacco, tobacco products, and tobacco-related devices are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of minors as authorized by this ordinance. Compliance checks shall also mean the use of minors who attempt to purchase tobacco, tobacco products, or tobacco-related 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 and tobacco-related devices.

Subd. 12 *E Cigarette* shall mean any electronic-smoking device that can be used to deliver nicotine or any other substances to the person inhaling from the device, including but not limited to electronic cigarettes, electronic cigars, electronic pipes or any other similar device.

**Section 3. License.** No person shall sell or offer to sell any tobacco, tobacco products, or tobacco-related device without first having obtained a license to do so from the City.

**Subd. 1 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. The applications 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 City Council for action at its next regularly scheduled council meeting. If the City 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.

Subd. 2 Action. The City Council may either approve or deny the license or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council shall approve the license, the City Clerk 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 decision.

Subd. 3 Term. All licenses issued under this ordinance shall be valid for the calendar year of the date of issue, and expire on December 31.

Subd. 4 Revocation or Suspension. Any license issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties sections of this ordinance.

Subd. 5 Transfers. All licenses issued under this ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the City Council.

Subd. 6 Moveable Place of Business. No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this ordinance.

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

Subd. 8 Renewals. The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least thirty days but no more than sixty days before the expiration of the current license. The issuance of a license issued under this ordinance 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.

**Section 4. Fees.** No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The fee for a license under this ordinance shall be set by council resolution.

**Section 5. Basis for Denial of 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:

- A. The applicant is under the age of 18 years.
- B. 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, or tobacco-related devices.
- C. The applicant has had a license to sell tobacco, tobacco products, or tobacco-related devices revoked within the preceding twelve months of the date of application.
- D. The applicant fails to provide any information required on the application, or provides false or misleading information.
- E. The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license.

**Section 6. Prohibited Sales.** IT shall be a violation of this ordinance for any person to sell or offer to sell any tobacco, tobacco product, or tobacco-related device:

- A. To any person under the age of eighteen (18) years.
- B. By means of any type of vending machine, except as may otherwise be provided in this ordinance.
- C. By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of a licensed premise in order to receive the tobacco, tobacco product, or tobacco-related device and whereby there is not a physical exchange of the tobacco, tobacco product, or tobacco-related device between the licensee or the licensee's employee, and the customer.
- D. By means of loosies as defined in Section 2 of this ordinance.
- E. Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, mariquana, or other deleterious, hallucinogenic, toxic, or controlled substance except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process.
- F. By any other means, to any other person, or in any other manner or form prohibited by Federal, State, or other local law, ordinance provision, or other regulation.

**Section 7. Vending Machines.** It shall be unlawful for any person licensed under this ordinance to allow the sale of tobacco, tobacco products, or tobacco-related devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.

**Section 8. Self-Service Sales.** It shall be unlawful for a licensee under this ordinance to allow the sale of tobacco, tobacco products, or tobacco-related devices by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product, or the tobacco-related device between the licensee or his or her employee and the customer. All tobacco, tobacco products, and tobacco-related devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case of other storage unit, one not left open or other area not freely accessible to the general public. Any retailer selling tobacco, tobacco products, or tobacco-related devices at the time this ordinance is adopted shall comply with this Section within 60 days.

**Section 9. Responsibility.** All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, or tobacco-related devices on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the City from also subjecting the employee to whatever penalties are appropriate under this ordinance, State or Federal law, or other applicable law or regulation.

**Section 10. Compliance Checks and Inspections.** All licensed premises shall be open to inspection by the local law enforcement 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 written consent of their parents or guardians, minors over the age of fifteen (15) years but less than eighteen (18) years, to enter the licensed premises to attempt to purchase tobacco, tobacco products, or tobacco-related devices. Minors used for the purpose of

compliance checks shall be supervised by the designated law enforcement officers or other designated City personnel. Minors used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase, nor the unlawful possession of tobacco, tobacco products, or tobacco-related devices when such items are obtained or attempted to be obtained as 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 Federal or State law.

### **Section 11. Other Illegal Acts.**

Subd. 1 Illegal Sales. It shall be a violation of this ordinance for any person to sell or otherwise provide any tobacco, tobacco product, or tobacco-related device to a minor.

Subd. 2 Illegal Possession. It shall be a violation of this ordinance for any minor to have in his or her possession any tobacco, tobacco product, or tobacco-related device. This subdivision shall not apply to minors lawfully involved in a compliance check.

Subd. 3 Illegal Use. It shall be unlawful for any person to light, burn, smoke, inhale, or exhale tobacco or a tobacco product from a tobacco-related device in any location where smoking is prohibited by the Minnesota Clean Indoor Air Act, or for any person to allow the same.

Subd. 4 Illegal Procurement. It shall be a violation of this ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, or tobacco-related device, and it shall be a violation of this ordinance for any person to purchase or otherwise obtain such items on behalf of a 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, or tobacco-related device. This subdivision shall not apply to minors lawfully involved in a compliance check.

Subd. 5 Use of False Identification. It shall be a violation of this ordinance for any minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

Subd. 6 Sampling Prohibited.

A. Pursuant to the authority granted to the City by Minnesota Statutes, Section 144.417, the operator of any tobacco products shop licensed under this chapter is hereby prohibited from any of the following:

- (1) Except for a bona fide sale of a smoking device, providing or otherwise making available a smoking device for use by any individual within the indoor area of a shop licensed under this ordinance;

(2) Permitting any person to light, burn, smoke, inhale, or exhale tobacco, tobacco products, or tobacco-related devices within the indoor area of any establishment with a tobacco license under this ordinance.

B. Pursuant to the authority granted to the City by Minnesota Statutes, Section 144.417, smoking for the purposes of sampling tobacco and tobacco-related devices is prohibited. It shall be unlawful for any person to light, burn, smoke, inhale, or exhale tobacco, tobacco products or tobacco-related devices within the indoor area of any establishment with a tobacco license under this ordinance.

## **Section 12. Penalties.**

Subd. 1 Licensees. Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance may be cited or criminally charged, and their license may be revoked by the City Council.

Subd. 2 Other Individuals. Other individuals who procure for or provide tobacco, tobacco products, or tobacco-related devices to minors, other than minors regulated by Subd. 3 of this Subsection, found to be in violation of this ordinance may be cited or criminally charged.

Subd. 3 Minors. Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase tobacco, tobacco products, or tobacco-related devices may be cited or criminally charged.

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

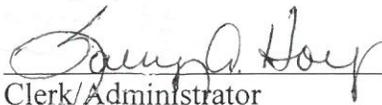
**Section 13. Exceptions and Defenses.** Nothing in this ordinance shall prevent the providing of tobacco, tobacco products, or tobacco-related devices to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this ordinance for a person to have reasonably relied on proof of age as described by State law.

**Section 14. Severability and Savings Clause.** If any section or portion of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a court or competent jurisdiction, that finding shall not serve as invalidation or affect the validity and enforceability of any other section or provision of this ordinance.

**Section 15. Effective Date.** This ordinance shall be effective upon adoption and publication according to law.

**Section 16. Repeal of Ordinances.** Ordinance No. 181 Relating to the Sale, Possession, and Use of Tobacco... adopted Jan. 5, 1998 is hereby repealed.

Adopted by the Braham City Council this 3rd day of March, 2015

ATTEST:   
Clerk/Administrator

  
Mayor