CITY OF ONAMIA
COUNTY OF MILLE LACS
STATE OF MINNESOTA

ORDINANCE NO. 115
AN ORDINANCE ADOPTING TOBACCO REGULATIONS AND REPEALING ORDINANCE NO. 65 ENTITLED TOBACCO ORDINANCE

Section

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115.01 PURPOSE AND INTENT

Because the city recognizes that many persons under the age of 21 years purchase or otherwise obtain, possess and use tobacco, tobacco products, and tobacco related devices, and 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 21 years and that those persons who reach the age of 21 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 chapter shall be intended to regulate the sale, possession and use of tobacco, tobacco products, and tobacco related devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, and tobacco related devices, and to further the official public policy of the state 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.

115.02 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.

COMPLIANCE CHECKS. 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 chapter. ***COMPLIANCE CHECKS*** shall involve the use of minors as authorized by this chapter. ***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.

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.

LOOSIES. The common term used to refer to a single or individually packaged cigarette.

PERSON UNDER THE AGE OF 21. Any natural person who has not yet reached the age of 21 years.

MOVEABLE PLACE OF BUSINESS. 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 authorized for sales transactions.

RETAIL ESTABLISHMENT. Any place of business where tobacco, tobacco products or tobacco related devices 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 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. 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.

TOBACCO or ***TOBACCO PRODUCTS.*** 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 a manner as to be suitable for chewing, sniffing or smoking.

TOBACCO RELATED DEVICES. Any tobacco product as well as a pipe, rolling papers or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing or smoking of tobacco or tobacco products.

VENDING MACHINE. 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 the person seeking to purchase the tobacco, tobacco product or tobacco related device.

115.03 LICENSE.

(A) *License required.* 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.

(B) *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 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. A background check will be completed, and must have a signed informed consent before completing in accordance with Minnesota Statute 299C.72. Upon receipt of a completed application, the City Clerk shall forward the application to the City Council for action at its next regularly scheduled City 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.

(C) *Action.* The City Council may either approve or deny the license, or it may delay action for a 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 City Council's decision.

(D) *Term.* All licenses issued under this chapter shall be valid for one calendar year from the date of issue.

(E) *Revocation or suspension.* Any license issued under this chapter may be revoked or suspended as provided in 115.13.

(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) *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 chapter.

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

(I) *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.

(J) *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.
Penalty, see 115.13

115.04 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 established in the city's Ordinance Establishing Fees and Charges, adopted pursuant to 30.11, as it may be amended from time to time.
Penalty, see 115.13

115.05 BASIS FOR DENIAL OF LICENSE.

(A) Grounds for denying the issuance or renewal of a license under this chapter includes but is 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 tobacco or tobacco products, or tobacco related devices.

(3) The applicant has had a license to sell tobacco, tobacco products, or tobacco related devices 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.

(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.

(C) 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.
Penalty, see 115.13

115.06 PROHIBITED SALES.

It shall be a violation of this chapter 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 21 years.

(B) By means of any type of vending machine, except as may otherwise be provided in 115.07.

(C) By means of self-service methods whereby the customer does not need to a make a verbal or written request to an employee of the 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 115.02.

(E) 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.

(F) By any other means, to any other person, on in any other manner or form prohibited by federal, state or other local law, ordinance provision, or other regulation.
Penalty, see 115.13

115.07 VENDING MACHINES.

It shall be unlawful for any person licensed under this chapter 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.
Penalty, see 115.13

115.08 SELF-SERVICE SALES.

It shall be unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products, or tobacco related devices by any means where by 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, or the tobacco related device between the licensee or his or her clerk and the customer. All tobacco, tobacco products, and tobacco related devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling tobacco, tobacco products, or tobacco related devices at the time this chapter is adopted shall comply with this section within 90 days following the effective date of this chapter.
Penalty, see 115.13

115.09 RESPONSIBILITY.

All licensees under this chapter 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 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.
Penalty, see 115.13

115.10 COMPLIANCE CHECKS AND INSPECTIONS.

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, or adults over the age of 18 but less than 21, to enter the licensed premise to attempt to purchase tobacco, tobacco products, or tobacco related devices. Compliance assistants used for the purpose of compliance checks shall be supervised by city designated law enforcement officers or other designated city personnel. Compliance assistants used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, or tobacco related devices when those items are obtained as a part of the compliance check. No compliance assistant used in compliance checks shall attempt to use a false identification misrepresenting the compliance assistant's age, and all compliance assistants lawfully engaged in a compliance check shall answer all questions about the compliance assistant'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. Penalty, see 115.13.

115.11 OTHER ILLEGAL ACTS.

Unless otherwise provided, the following acts shall be a 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, or tobacco related device to any person under the age of 21.

(B) *Illegal possession.* It shall be a violation of this chapter for any person under the age of 21 to have in his or her possession any tobacco, tobacco product, or tobacco related device. This division (B) shall not apply to persons under the age of 21 lawfully involved in a compliance check.

(C) *Illegal use.* It shall be a violation of this chapter for any person under the age of 21 to smoke, chew, snuff or otherwise use any tobacco, tobacco product, or tobacco related device.

(D) *Illegal procurement.* It shall be a violation of this chapter for any person under the age of 21 to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product or tobacco related device, and it shall be a violation of this chapter for any person to purchase or otherwise obtain those items on behalf of a person under the age of 21. It shall further be a violation for any person to coerce or attempt to coerce a person under the age of 21 to illegally purchase or otherwise obtain or use any tobacco, tobacco product, or tobacco related device. This division (D) shall not apply to persons under the age of 21 lawfully involved in a compliance check.

(E) *Use of false identification.* It shall be a violation of this chapter for any person under the age of 21 to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person. Penalty, see 115.13

115.12 EXCEPTIONS AND DEFENSES.

Nothing in this chapter shall prevent the providing of tobacco, tobacco products, or tobacco related devices to a person under the age of 21 as part of a lawfully recognized religious, spiritual, or cultural ceremony. 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.

115.13 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 as follows:

(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 thirty (30) days of the date of the decision made by the hearing officer.

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

(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 $75 for a first violation of this chapter; $200 for a second offense at the same licensed premises within a 24-month period; and $250 for a third or subsequent offense at the same location within a 24-month period. In addition, after the third offense, the license shall be suspended for not less than seven days.

(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 fine of $50.

(3) *Persons under the age of 21*. Persons under the age of 21 found in unlawful possession of or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, or tobacco related devices, 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 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 established from time to time by the Ordinance Establishing Fees and Charges, adopted pursuant to 30.11, as it may be 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 penalties shall prevail.

115.14 REPEALER.

Ordinance No. 65 entitled Tobacco Ordinance is hereby repealed.

Adopted by the City Council of the City of Onamia this 10th day of January, 2024.

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Marge Agnew, Mayor

ATTEST:

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Michelle Peterson, City Clerk