

Planning Commission

December 9, 2019 – 7 pm

Council Chambers
Golden Valley City Hall
7800 Golden Valley Road

REGULAR MEETING AGENDA

1. **Call to Order**
2. **Approval of Agenda**
3. **Approval of Minutes**
 - a. November 25, 2019, Regular Planning Commission Meeting
4. **Public Hearing – CUP Amendment**

Applicant: Home Health Care Plus, Inc.
Address: 800 Boone Avenue North
Purpose: To modify an existing condition that limits the use of Boone Ave for loading, unloading, and parking of busses and vans
5. **Discussion – Narrow Lots**
6. **Discussion – Tobacco Sales Restrictions**

--Short Recess--
7. **Council Liaison Report**
8. **Reports on Meetings of the Housing and Redevelopment Authority, City Council, Board of Zoning Appeals, and other meetings**
9. **Other Business**
10. **Adjournment**



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Planning Commission

November 25, 2019 – 7 pm

Council Chambers
Golden Valley City Hall
7800 Golden Valley Road

REGULAR MEETING MINUTES

Call to Order

The meeting was called to order at 7 pm by Vice-Chair Johnson.

Roll Call

Commissioners present: Rich Baker, Adam Brookins, Andy Johnson, Lauren Pockl, Ari Prohovsky, and Ryan Sadeghi

Commissioners absent: Ron Blum and Chuck Segelbaum

Staff present: Planning Manager Jason Zimmerman

Council Liaison present: Steve Schmidgall

Approval of Agenda

MOTION made by Baker, seconded by Pockl, to approve the agenda of November 25, 2019, as submitted and the motion carried unanimously.

Approval of Minutes

MOTION made by Brookins, seconded by Sadeghi, to approve the October 28, 2019, and November 12, 2019, minutes as submitted and the motion carried unanimously.

Public Hearing – Major PUD Amendment

Applicant: John Gabbert

Address: 1801 Noble Drive

Purpose: To subdivide properties within an existing PUD and incorporate some portions of adjacent properties

Staff announced that the applicant was requesting that the public hearing be delayed until additional stormwater information could be provided.

MOTION made by Baker, seconded by Pockl, to table the agenda item to a future Planning Commission meeting and the motion carried unanimously.

New Business – Site Plan Review

Applicant: Webb Golden Valley, LLC

Address: 5410 Wayzata Boulevard

Purpose: To apply development standards and other City requirements to a parking lot reconfiguration



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Zimmerman introduced the agenda item and explained that it only requires review by the Planning Commission and does not go on to the City Council. He provided an overview of the site and highlighted the planned updates to the parking lot which would result in the creation of 41 spaces. He noted that because the building was not being modified, there were limited opportunities to evaluate the site against the standards of the I-394 Mixed Use development standards.

Zimmerman pointed to the development standard that requires screening of parking from view of the public street and stated that the existing row of trees along Turners Crossroad appears to provide adequate screening.

He then reviewed the City requirements for off-street parking. He noted that there is an absence of curb and gutter along the east edge of the parking lot near the Global Pointe senior building and that while new traffic islands have been installed, there is one area where the island is painted rather than raised. He said staff would like to better understand if truck movements preclude a raised island in that location. He noted that a number of landscaped islands are shown on the plan, but that based on City requirements roughly five more should be included. He also asked for calculations to show that the new plan meets the four percent standard for landscaped area.

Zimmerman said a snow storage and/or removal plan must be submitted to the City and that additional pedestrian provisions were needed to create clear access from the north parking lot to the building. He noted that the Building Official had some questions about the location of the accessible parking and that bicycle parking for 19 bicycles would need to be installed.

Finally, he asked for calculations documenting the amount of impervious surfaces on the site, explained that the Fire Department will require protection around the hydrant along the alley, and demonstrated that seven parking spaces are shown as being located within the City's right-of-way and must be removed from the plan if a permit is not obtained. He noted that Stormwater, Right-of-Way, and Utility permits will be required before work begins and will ensure these items are addressed.

Johnson asked for confirmation that the Commissioners should only be reviewing items related to the parking lot. Zimmerman agreed. Baker asked about vacant parcels to the west of the site. Zimmerman explained that the City's Housing and Redevelopment Authority owned one while MnDOT owned the other. Baker asked if they could be used to provide additional parking and perhaps paved with pervious materials. Zimmerman stated that City staff was not yet completely comfortable with pervious pavement as it still needed to be tested over a period of time.

Brookins asked if the variance was approved. Zimmerman said it was approved and the review for the Commission should be focused on the items related to site design. Baker asked if the south parking lot should also be screened from I-394. Zimmerman pointed out that an elevation change prevented views of the parking lot from the highway. Baker asked why curb and gutter is required. Zimmerman explained that it helps to capture stormwater runoff and direct it to catch basins where it can be treated. Baker asked about the function of traffic islands. Zimmerman pointed out that they help guide traffic,

especially in the winter when snow covers the painted lines, and provide space for shade trees and infiltration.

Sadeghi asked if any of the entry points into the businesses were relocating. Zimmerman said no, they were remaining in the same locations. Pockl asked if there were any challenges around obtaining the site permits. Zimmerman said likely not, but that staff needed a better understanding of how much of the site was going to be disturbed because there are thresholds that could trigger additional water quality treatments.

Brookins asked if the site was in compliance with respect to the amount of impervious surface. Zimmerman said it was unlikely that the site was compliant now, but that it would become more compliant with the changes being proposed. Baker asked several questions to understand how the parking situation evolved to the point where there was a parking shortage compared to the City's minimum parking standards.

Doug Feickert from Framework Architects, representing the applicant, addressed the Commission and pointed out that the main effort of the owner was to provide additional parking spaces for large events. He stressed the balancing act he was facing in terms of adding more green space which would create more disturbed areas which would in turn reduce the amount of parking available and work contrary to the objectives of the owner.

Brookins asked about the vacant lots to the west of the property. Feickert acknowledged that he had a discussion with staff about utilizing these areas but the focus at this time was on a smaller project rather than a larger reworking of the site. He also mentioned the possibility of vacating the alley in order to return the land to the adjacent property owners. Baker asked how often the alley is used by the tenants in the buildings to the east. Feickert stated that up to this point it has mostly been used for construction traffic.

Johnson asked if there were any reactions to the staff report. Feickert said he would need to speak with the owner, but he knows they will try to maintain as many spaces as possible. He said the one island that was not proposed to be raised was due to truck movements and that this could be demonstrated to staff with a diagram. Pockl asked if parking spaces would be lost if the island was raised. Feickert said likely not, but spaces would be lost if other landscaped islands would need to be added. Pockl noted that based on the minimum number of spaces required there would not be a shortage even if a few spaces were lost. Feickert agreed. Pockl asked about the location of the accessible spaces. Feickert replied that the grades on the site may have pushed the spaces further from the door but that he would work with the Building Official to make sure they are located correctly.

Pockl asked for clarification on if the Commission was approving a plan or simply giving guidance to staff. Zimmerman replied that the language in the code states that the Commission should approve the plan, but that they are free to provide direction to staff to work with the applicant to reach agreement on various issues within certain parameters. Baker stated that the product at this point is not a final site plan and that he was concerned about approving something that wasn't complete. Zimmerman said

there were two options – approve the current plan with direction to staff on priorities in certain areas, or give feedback and then have a revised plan be brought back in front of the Commission for approval. Pockl said she preferred the second option; Baker agreed. Brookins pointed out there was an opportunity to think big and think long-term and do the plan correctly.

Zimmerman asked if there were certain areas that the Commissioners felt were higher priority. Sadeghi asked that the dumpster be carefully screened and that pedestrian safety be a priority. Pockl stated she was interested in understanding the necessary truck movements so that any raised islands could be added. Baker agreed that safety was critical and that he was less concerned about the aesthetics of the parking lot. Brookins stated that sidewalk access to the building was important and that he would like to understand the status of all other zoning requirements. Sadeghi encouraged the applicant to consider using the vacant parcels and/or the alley to help improve the entrance to the site. Baker agreed.

Johnson offered language directing staff to “finalize recommendations with options defined when business goals can’t be achieved due to code limitations. In particular, provide a long-term design that improves the relationship between interior landscaping, traffic flow, sidewalks, and safety. Consider improved dumpster screening and alternate uses of alley and other land.”

MOTION made by Baker, seconded by Brookins, and the motion carried unanimously to ask staff to continue working with the applicant to revise the site plan using the guidance provided by the Commission and to return with a finalized plan at a future meeting.

--Short Recess--

Council Liaison Report

Schmidgall updated the Commission on a number of items that have been before the Council, including the Solid Waste Collection Policy (Waste Hauling), the 2020 Pavement Management Program discussion regarding street width, the Conditional Use Permit that was approved for Borton Volvo, the progress of the Council Chamber remodel, a discussion on Restricted Covenants, and an update on the planned Bassett Creek Regional Trail.

Reports on Meetings of the Housing and Redevelopment Authority, City Council, Board of Zoning Appeals, and other meetings

No other reports were discussed.

Other Business

Baker asked that an email that the Commissioners had received regarding the narrow lot topic be included in the record. Zimmerman stated that all of the emails and letters received as part of the various discussions would be collected by staff and included with the materials for the public hearing.

Adjournment

MOTION made by Pockl, seconded by Brookins, and the motion carried unanimously to adjourn the meeting at 8:27 pm.

Adam Brookins, Secretary

Jason Zimmerman, Planning Manager

UNAPPROVED



MEMORANDUM

Planning Department

763-593-8095 / 763-593-8109 (fax)

Date: December 9, 2019
To: Golden Valley Planning Commission
From: Jason Zimmerman, Planning Manager
Subject: Informal Public Hearing – Amend Conditional Use Permit (CU-119) Modifying the Condition Regarding the Use of Boone Avenue North

Property address: 800 Boone Avenue North

Applicant: Home Health Care Plus, Inc.

Zoning District: Light Industrial

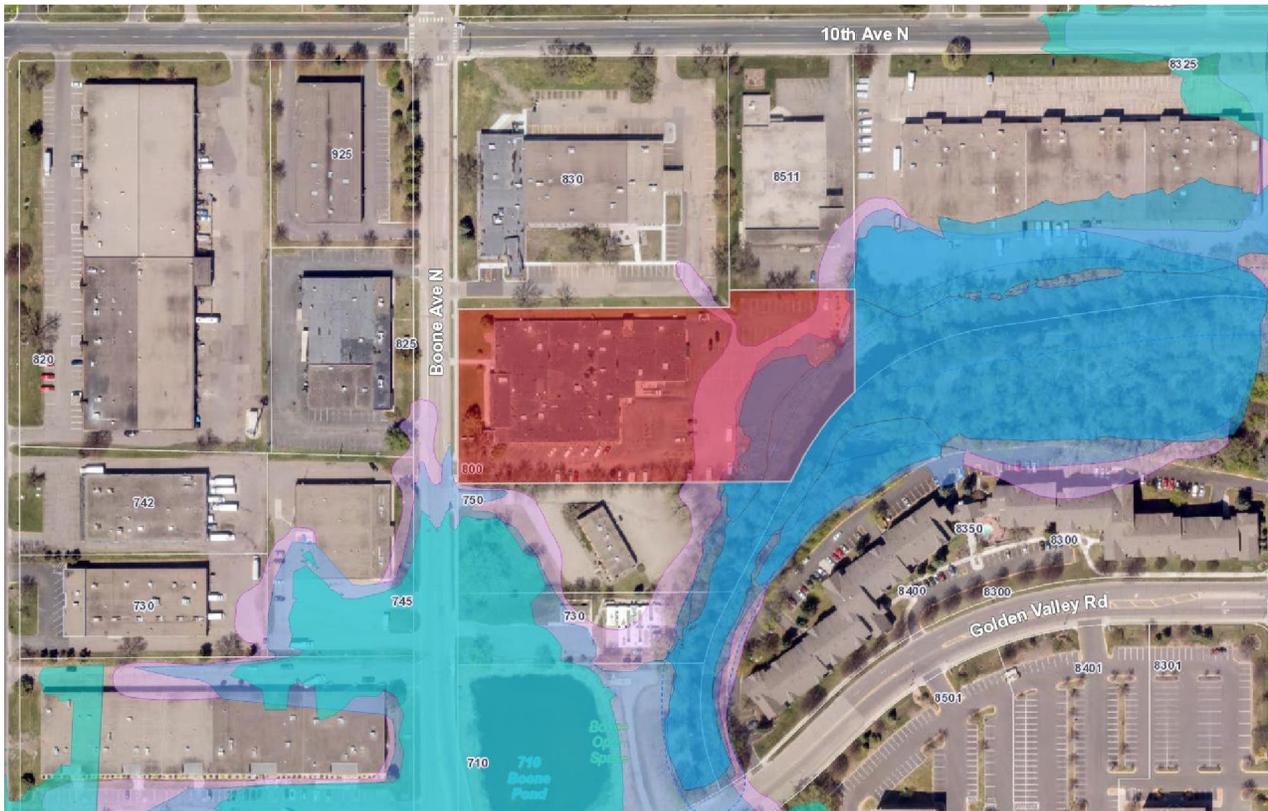
Current uses: Adult day care, home health care

Adjacent uses: Industrial, light industrial, office (north, west, south); multi-family residential (east)

Property owner: ProPartners Group, LLC

Lot size: 151,713 sq. ft. (3.5 acres)

Future Land Use: Light Industrial



2018 aerial photo (Hennepin County)

Summary

The operators of the adult day care located at 800 Boone Avenue North are requesting an amendment to the current Conditional Use Permit (CUP) in order to modify a condition that prohibits the use of Boone Ave for loading, unloading, and parking of vehicles related to the adult day care business.

Background

The existing CUP was amended by the City Council in November of 2018. At that time, based on concerns regarding safety and visibility along Boone Avenue, a condition was approved that requires all loading, unloading, and parking of vans and buses to take place in the parking lot and not on Boone Avenue.

In September of 2019, staff observed buses parked on the east side of Boone Ave and loading and unloading clients of the adult day care. A letter was sent to the property owner reiterating the condition that had been approved. In response, the operators of the adult day care indicated they were unaware of this restriction and had not been notified or included in the decision when it made. Due to what they see as a critical aspect of their site operations, they have applied for a CUP amendment in order to revise the condition and to allow loading and unloading to continue along the east side of Boone Ave.

Proposal

The adult day care facility operates from 8 am to 4:30 pm on weekdays. In addition to on-site services, two busses and 22 vans transport individuals to and from their homes daily as well as to and from other locations in the surrounding communities. When these busses and vans are not in use, they park in the parking lot located to the south and east of the building. This lot not only serves the adult day care, but also provides 77 spaces for the home health care business that operates out of the north portion of the building. Two busses and five to ten vans typically remain in the parking lot overnight.

The applicant has indicated that there are three groups of clients that utilize different portions of the property. Two groups of roughly 175 individuals enter and depart from the front (west) entrance on Boone Avenue. There are typically 65-67 trips per day that use this entrance. A third group of 66 individuals utilizes a side (southeast) entrance within the parking lot. There are typically 20-22 trips per day that use this entrance.

Because of the lack of accessible accommodations at the southeast entrance, its smaller size, and where—within the building—the three groups are located for the rest of their day, the applicant has stressed the importance of maintaining the use of Boone Ave for loading and unloading rather than conducting this activity on-site as the current condition requires.

Boone Ave is scheduled to be modified for on-street bike lanes in 2020. Installation of these bicycle facilities would require the removal of on-street parking on both sides of the road. In response to this challenge, the applicant has offered two possible modifications to the front yard

in order to allow loading and unloading of clients to take place without interfering with the bike lanes.

Option A would consist of an “indented curb” that would allow busses and vans to wait alongside of the travel lanes of Boone Ave – the paved surface would be extended into the front yard of the property. Option B would create an “onsite drive” that would require two additional curb cuts but would allow busses and vans to pull up closer to the front entrance to the building. Both options would introduce new impervious surfaces to the front yard of the property. (See attached plans for diagrams of both options.)

Zoning Considerations

Parking

Based on the number of clients the adult day care is licensed to serve and the square footage of the home health care offices that share the building, it appears the parking lot in its current configuration has a sufficient number of parking spaces to meet the minimum requirements of the City Code. [Sec 113-151, Subdiv (c)]

Use	Requirement	Existing Conditions	Spaces Required
Adult Day Care	1 space per 5 clients	350 clients	70
Office	1 space per 250 sq ft	16,605 sq ft	67
		Total Required	137
		Existing Spaces	155

Staff also believes there are inefficiencies in the layout of the parking lot and it is likely additional parking spaces could be created with the implementation of a new circulation and parking plan.

Setbacks

In a Light Industrial zoning district, the City Code requires that the front yard setback (the first 35 feet from the street right-of-way) be maintained as a landscaped green area. No parking or drive aisles (except for driveway access from the street) is permitted within this area. [Sec 113-151, Subdiv (b)(9)(a)(1)]

Engineering Considerations

The Engineering Division has reviewed the application and has the following comments and concerns:

Traffic Conflicts

Staff has concerns regarding potential conflicts with users of Boone Ave (vehicles, bicycles, and pedestrians), due to the offsets of adjacent driveways as well as the large volume of vehicles potentially pulling off of and onto Boone Ave during peak hours. Both proposed options create the possibility of excessive queueing that could result in busses and/or vans spilling out beyond the “indented curb” or “onsite drive” and creating issues within the travel lanes.

Stormwater Management

A majority of the property is covered by impervious surfaces and currently has no runoff volume control, rate control, or water quality treatment. There are properties and infrastructure in this area of Bassett Creek that are at risk of flooding. Staff has concerns about adding more impervious surfaces to this site without addressing runoff and stormwater management.

Maintenance

Staff has concerns regarding the long term maintenance of the “indented curb” option as it would require coordination with the City in terms of street sweeping and snow removal.

Evaluation

Staff is not supportive of either proposed option to modify the front yard of the property to provide off-street loading and unloading of clients for the adult day care. The removal of landscaped green area would be in violation of the requirements of the zoning chapter, would create additional impervious surfaces that would likely amplify existing flood risks along Bassett Creek, and would create potential traffic conflicts with others using Boone Ave.

Given the planned removal of parking from Boone Ave with the installation of on-street bike lanes in 2020, staff believes that the applicant would best be served by providing an area to load and unload on-site – likely directly to the south of the building. While there appear to be parking spaces in excess of what is required by City Code, concerns raised by the applicant over the loss of spaces could likely be alleviated with a reexamination of the existing circulation and parking patterns.

In opposing the suggested changes to the CUP that would allow loading, unloading, and parking on Boone Ave, staff finds that the modifications to the existing CUP would create additional impacts that could not be satisfactorily mitigated. Staff offers the following findings opposing the amended CUP:

Factor	Finding
1. Demonstrated Need for Proposed Use	Standard met. The applicant has demonstrated that there is a need for adult day care by successfully operating two facilities in Golden Valley.
2. Consistency with the Comprehensive Plan	Standard met. The Future Land Use Map guides the site for long-term light industrial use. Adult day care centers, through a conditional use permit, are consistent with that land use designation.

3. Effect upon Property Values	Standard met. The removal of the existing permit condition would likely not negatively impact property values in the area.
4. Effect on Traffic Flow and Congestion	Standard not met. Clients utilizing the daycare generally arrive via bus or van, reducing the number of individual trips made to and from the facility. However, the proposal to allow loading, unloading, and parking on Boone Avenue poses problems related to traffic flow and congestion that cannot be adequately mitigated.
5. Effect of Increases in Population and Density	Standard met. The use does not significantly impact the general population of the area, though the adult day care business does temporarily impact the daytime population.
6. Compliance with the City’s Mixed-Income Housing Policy	Not applicable.
7. Increase in Noise Levels	Standard met. Minimum noise is generated by the busses and vans transporting clients. Past complaints of noise generated by large events and evening and nighttime use of the property have been mitigated by conditions included in permit.
8. Generation of Odors, Dust, Smoke, Gas, or Vibration	Standard met. No such problems are expected.
9. Any Increase in Pests or Vermin	Standard met. No such problems are expected.
10. Visual Appearance	Standard not met. Removal of landscaped green space within the front yard setback in order to construct off-street queuing areas for busses and vans would negatively impact the appearance of the property and could not be adequately mitigated.
11. Other Effects upon the General Public Health, Safety, and Welfare	Standard not met. Impacts to the City and its residents, in the form of new traffic conflicts and an increased risk of flooding due to

	additional impervious surfaces, would be anticipated under an amended permit.
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Recommended Action

Based on the finding that three of the eleven standards for evaluating a CUP would not be met, staff recommends denial of an amended Conditional Use Permit 119 modifying the condition regarding the use of Boone Avenue North.

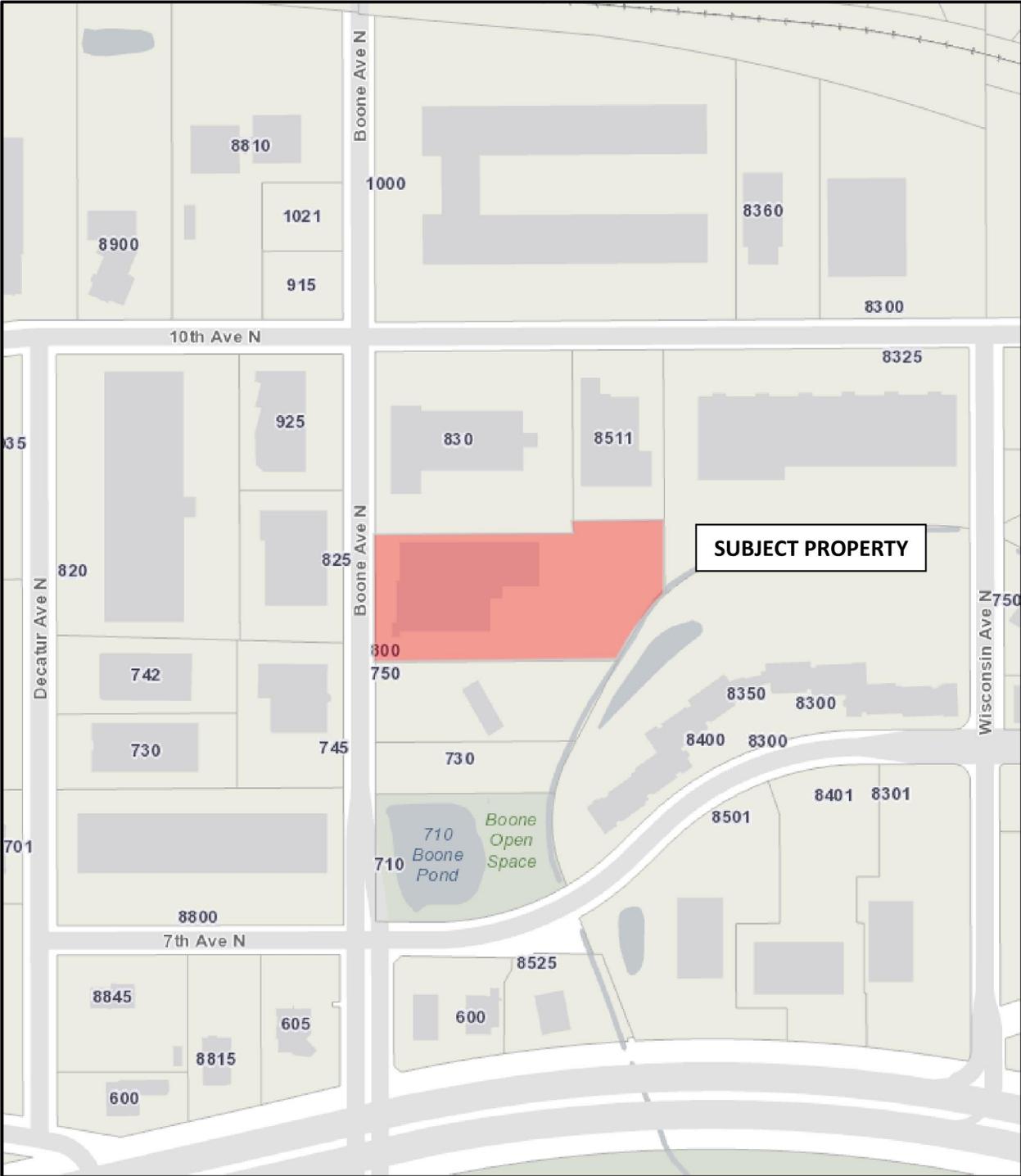
Attachments

Location Map (1 page)

Conditional Use Permit No. 119, Amendment #3 (2 pages)

Project Narrative (3 pages)

Plan Set submitted October 25, 2019 (5 pages)



(Top 3 inches reserved for recording data)

**CITY OF GOLDEN VALLEY
CONDITIONAL USE PERMIT
No. 119, Amendment #3**

Date of Approval: December 18, 2018, by the City Council in accordance with Section 113-55 (b) and Section 113-93 of City Code

Issued To: DRAM Properties (David Olshansky)

Approved Location: 800 Boone Avenue North, Golden Valley, MN

Approved Conditional Use: To allow for an adult daycare use in the Light Industrial Zoning District

Legal Description: Lot 9, except the North 350 feet of the East 186.69 feet thereof and further excepting the North 375.15 feet of said Lot 9 lying West of the East 186.69 feet thereof; Also that part of Lot 11, lying North of a line parallel with and distant 635.15 feet south of the North line of said Lot 9, aforesaid; All in Busch's Golden Valley Acres, Hennepin County, Minnesota

Check here if all or part of the described real property is Registered (Torrens)

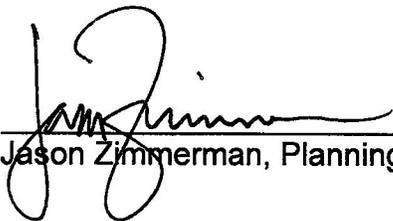
Conditions of Approval:

1. The adult day care shall be limited to the number of clients specified by the Minnesota Department of Human Services.
2. All necessary licenses obtained by the Minnesota Department of Human Services and the Minnesota Department of Health shall be kept current.
3. The hours of normal operation for the adult day care shall be from 7 am to 5:30 pm, Monday thru Friday.
4. The adult day care facilities shall not be used for any activities that are not permitted in the Zoning Code.
5. All vans and buses shall be loaded, unloaded, and parked in the parking lot and shall not be loaded, unloaded, or parked on Boone Avenue. No vans or buses

- may be parked in the angled parking stalls or in the first 21 perpendicular stalls located south of the building along the drive aisle.
- 6. No alcohol shall be served or distributed on-site without first obtaining the proper license or permit.
- 7. All outdoor trash and recycling containers shall be screened in a manner acceptable to the Physical Development Department.
- 8. The applicant shall provide an on-site bicycle rack allowing parking for a minimum of five bicycles.
- 9. The requirements found in the memo to Mark Grimes, Director of Planning and Zoning, from Ed Anderson, Deputy Fire Marshal, and dated May 17, 2011, shall become a part of these requirements.
- 10. This approval is subject to all other state, federal, and local ordinances, regulations, or laws with authority over this development.

This permit does not exempt the property owner or occupant from compliance with all provisions of city code, or any other applicable regulations, laws, and ordinances.

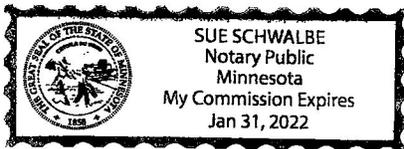
City of Golden Valley, a Minnesota municipal corporation

By: 
 Jason Zimmerman, Planning Manager

State of Minnesota)
)
 County of Hennepin) ss

This instrument was acknowledged before me on January 2, 2019, by Jason Zimmerman Planning Manager of the City of Golden Valley, a municipal corporation.

(Stamp)




 (signature of notarial officer)

My commission expires: January 31, 2022
 (month/day/year)

THIS INSTRUMENT WAS DRAFTED BY:
 City of Golden Valley
 7800 Golden Valley Road
 Golden Valley, MN 55427
 (763) 593-8000

BII BUETOW 2 ARCHITECTS, INC.

Project Narrative October 23, 2019

Application for an Amendment to Conditional Use Permit CUP-119
800 Boone Avenue North
Golden Valley, Minnesota 55427

B2#1923

Legal Description of this Property

Property ID: 31-118-21-13-0003 BUSCHS GOLDEN VALLEY ACRES

LOT 9 EXCEPT THE NORTH 350 FEET OF THE EAST 186.69 FEET THEREOF AND FURTHER EXCEPTING THE NORTH 375.15 FEET OF SAID LOT 9 LYING WEST OF THE EAST 186.69 FEET THEREOF; ALSO THAT PART OF LOT 11 LYING NORTH OF A LINE LYING NORTH OF A LINE PARALLEL WITH AND DISTANT 635.15 FEET SOUTH OF THE NORTH LINE OF SAID LOT 9. AFORESAID; ALL IN BUSCH'S GOLDEN VALLEY ACRES, HENNEPIN COUNTY, MINNESOTA

Facility Description of 800 Boone Avenue North

- The building comprises 42,655 square feet of floor area on one floor. Approximately 60% or 26,050 square feet of the building is utilized to serve Adult Day Care operations.
- The Adult Day Care Facility operates from 8:00 AM through 4:30 PM, five days a week (weekdays only).
- Services provided include, educational programs, recreation, exercise, nursing services, health monitoring and dining upon individual and group bases.
- A full-service food preparation kitchen is on-premises from which meals are delivered to Adult Clients each day.
- Three separate Adult Client Groups are served in different areas of the building. These groups are each diverse in that their respective cultural backgrounds are identified as, Hispanic, Asian and Eastern European.
 - 175 Adult Clients (2 groups) utilize the Boone Avenue Entrance for entrance into and departure from the building.
 - 66 Adult Clients (1 group) utilize the Southeast Entrance for entrance into and departure from the building.
- 2 Busses and 22 Mini-Vans serve to transport individuals and groups of Adult Clients from their individual places of residence upon a daily basis. These Busses and Mini-Vans park on-site after drop-off until required to pick-up Adult Clients for the trips back to their individual places of residence. Some Adult Clients are transported by family members in private automobiles. The daily drop-off and pick-up operations each require 45 minutes in the morning and 45 minutes in the afternoon to achieve their tasks.
- Should the Bus and Mini-Van traffic be prevented from continuing to operate on Boone Avenue, the Facility's recourse would be to utilize the Southeast Entrance. That condition would pose the following problems for all Adult Day Care operations within the Facility:
 - The Southeast Entrance is not handicapped accessible.
 - The Southeast Entrance is smaller in size than the Boone Avenue Entrance. The outcome of that use would require a much longer period of time for Adult Clients to exit Busses and Mini-Vans and to enter the Facility.
 - Those 175 Adult Clients would be required to attempt a long, difficult and tiresome walk to through the building that would also be disruptive to another Adult Day Care Program conducted in the Facility.
- Thus, it is essential that the 175 Adult Clients who currently use the Boone Avenue Entrance must continue to use that entrance.

Proposed Site Modifications:

In order to facilitate safer, more direct and more efficient drop-off and pick-up operations for the adult clients who are served by this Adult Day Care Facility, the choice of one of two possible modification options is proposed:

Option A Indented Curb-side or Option B On-Site Recessed

The selection of Option A or Option B would improve drop-off and pick-up operations.

Amendment to Conditional Use Permit CUP-119

The Owner is seeking City Site Plan approval of this project by the City of Golden Valley and the City's issuance of an amendment to Conditional Use Permit CUP-119 in order to proceed with the above improvements.

BII BUETOW 2 ARCHITECTS, INC.

Statement that Proposed Use Conforms to the City of Golden Valley's 10 Factors of Evaluation for Conditional Use Permits

October 23, 2019

Application for an Amendment to Conditional Use Permit CUP-119
800 Boone Avenue North
Golden Valley, Minnesota 55427

B2#1923

Section 113-30 of the Golden Valley Zoning Code

The proposed use described in this Conditional Use Permit Application conforms to the following 10 Factors of Evaluation for Conditional Use Permits as set forth in Section 113-30 of the Golden Valley Zoning Code only insofar as they pertain to this proposed use on this site.

(1) **Demonstrated need for the proposed use.**

Adult Day Care services and their facilities in Minnesota have been found to be essential to certain groups of adults who reside in Minnesota. It has also been found that adult day care programs are beneficial to those adult residents who are able to participate in those programs.

One unique aspect of this program is that it provides its essential services to three diverse groups each with their own cultural identity and heritage: Hispanic, Asian (Chinese and Vietnamese) and Eastern European.

Most of the adults who are brought to and picked up from this Adult Day Care Facility by this Facility's own busses and vans, are either aged, infirm, vulnerable or do not have a self-provided means of transportation. Those adults greatly depend upon the daily service programs, invigorating care and healthy meals that are currently provided at this Adult Day Care Facility. Thus, it is observed that these adults greatly depend upon this transportation service.

Furthermore, these adults physically require a ground-level building entrance that provides a direct entry into and exit from the building. That entry should allow them to readily and safely utilize the provided bus and van transportation especially in inclement weather. These adults also require that building entry to be close to the street, handicapped accessible and without the presence of stairs or steps.

(2) **Consistency with the Comprehensive Plan of the City.**

The City's 2040 Comprehensive Plan identifies the property that this Adult Day Care Facility occupies as 'Light Industrial'. This property is also designated as 'Light Industrial' in the current City Zoning Map. This property is utilized as a Light Industrial' use (permitted by a Conditional Use Permit).

(3) **Effect upon property values in the neighboring area.**

Surrounding and adjacent land uses are zoned 'Industrial' or 'Light Industrial', are of industrial character with sites and buildings that house fully enclosed office, manufacturing, assembly and storage functions.

Those functions and their respective land values do not depend upon views of surrounding and adjacent properties nor are they negatively affected by how the street, grounds, and buildings of surrounding and adjacent properties are utilized.

Similarly, the functions and land values of surrounding and adjacent land uses are not affected by the site and public street operations of this Adult Day Care Facility.

(continued)

BII BUETOW 2 ARCHITECTS, INC.

Statement that Proposed Use Conforms to the City of Golden Valley's 10 Factors of Evaluation for Conditional Use Permits (continued)

- (4) Effect of any anticipated traffic generation upon the current traffic flow and congestion in the area.
The current bus and van traffic that drops-off and picks-up the adult clients who are served by this Adult Day Care Facility do not adversely affect the street traffic generated on Boone Avenue. Also, that drop-off and pick-up traffic is provided outside of typical morning and afternoon "rush-hour" traffic that occurs in the immediate area. The provision of an 'indented curb-side' drop-off and pick-up area or an 'on-site recessed' drop-off and pick-up area would be even less likely to provide an adverse effect to the street traffic of Boone Avenue.
- (5) Effect of any increases in population and density upon surrounding land uses.
If this question refers to future increases in the population of adults who desire to utilize this adult day care facility, the response is that the currently-viewed option would be that other, existing or yet-to-be developed adult day care facilities would have to serve that demand for service. This facility is currently operating at near capacity. The effect upon surrounding land uses will be negligible.
- (6) Compliance with the City's Mixed-Income Housing Policy (if applicable to the proposed use).
Not relevant to this facility.
- (7) Increase in noise levels to be caused by the proposed use.
The sounds of Busses and Mini-Vans arriving at and leaving from this site are observed to be similar to the sounds of passing vehicle traffic on Boone Avenue and certainly less than the sounds of passing semi tractor-trailers that use Boone Avenue to serve adjacent sites.
- (8) Any odors, dust, smoke, gas, or vibration to be caused by the proposed use.
The vehicle traffic of this proposed use does not generate odors, dust, smoke or vibration any more than that generated by the typical daily vehicle traffic on Boone Avenue that passes by this facility.
- (9) Any increase in pests, including flies, rats, or other animals or vermin in the area to be caused by the proposed use.
There will not be any such occurrence.
- (10) Visual appearance of any proposed structure or use.
There is not any effect. The exterior of this building is not being altered. The provision of an indented curb or recessed driveway that would be closer to the facility's entry would improve access to and from the facility for the Adult Day Care Program's adult users and would make it easier for the facility's bus and van drivers to look for and to accommodate passing vehicle traffic on Boone Avenue.



1 EXISTING SITE PLAN: AERIAL VIEW
 1" = 20'-0" 

RECEIVED
 OCT 25 2019
 BY: _____

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 All rights reserved. This plan was prepared by Buetow 2 Architects, Inc. and is the property of Buetow 2 Architects, Inc. It is to be used only for the project and site indicated hereon and is not to be used for any other project or site without the written consent of Buetow 2 Architects, Inc.
 Project: _____
 Date: _____
 Registration Number: 1121

B I I BUETOW 2 ARCHITECTS, INC.
 2005 DEAN PARKWAY SUITE 210
 MINNEAPOLIS, MINNESOTA 55416
 (612) 455-2828

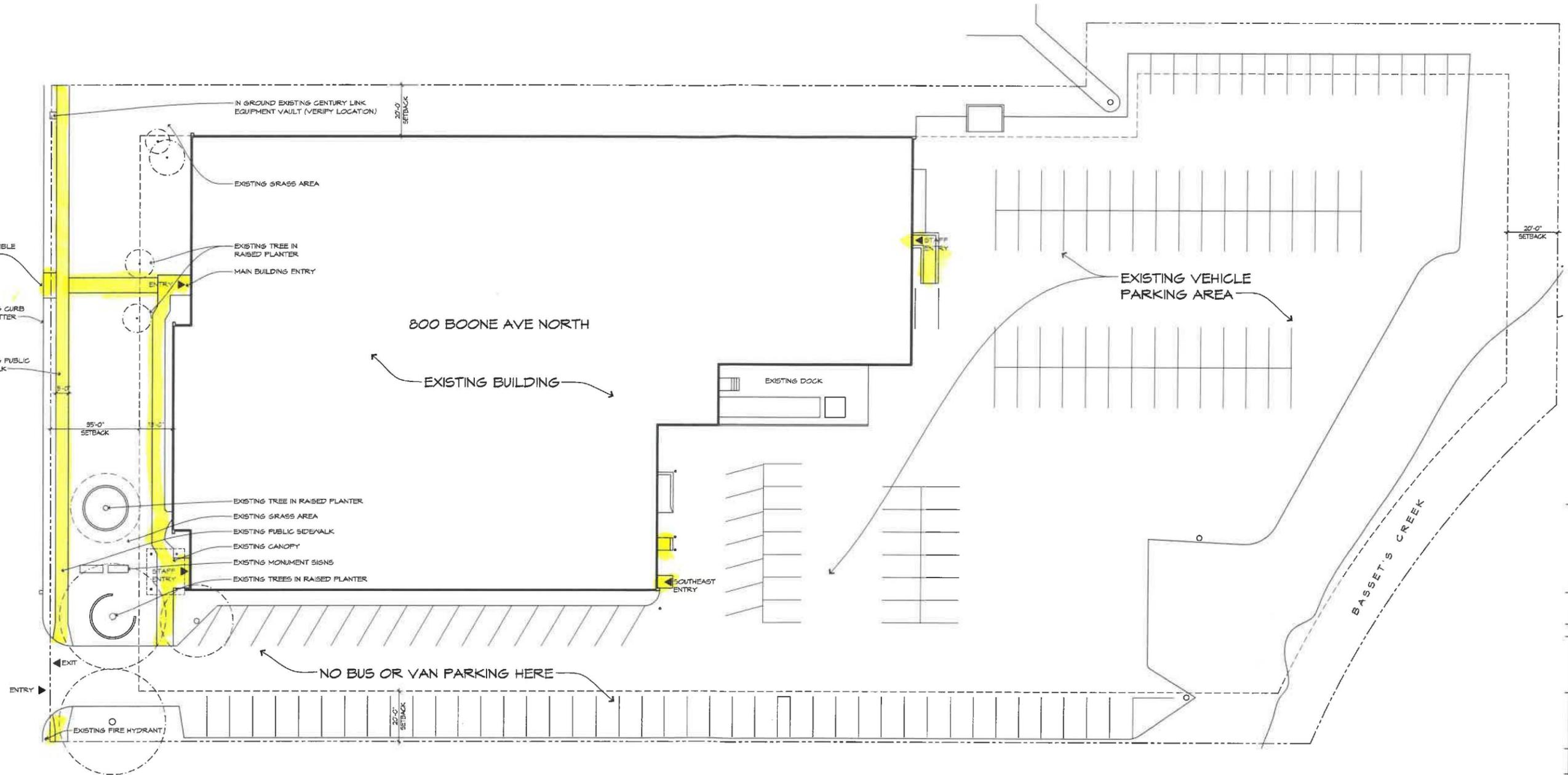
NO.	DATE	REVISION

OCTOBER 23, 2019

Improved Bus and Van Drop-Off/Pick-Up
 for ProPartners
 800 Boone Avenue North
 Golden Valley, Minnesota

B2#1923

BOONE AVENUE NORTH



2 EXISTING SITE PLAN
 1" = 20'-0"



COMPANY: BII ARCHITECTS, INC.
 I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY
 ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND
 THAT I AM A LICENSED ARCHITECT UNDER THE LAWS OF THE
 STATE OF MINNESOTA.
 Randy L. Enger
 REGISTRATION NUMBER: 11331
 DATE:

BII BUETOW 2 ARCHITECTS, INC.
 2905 DEAN PARKWAY, SUITE A
 MINNEAPOLIS, MINNESOTA 55416
 (612) 455-2626

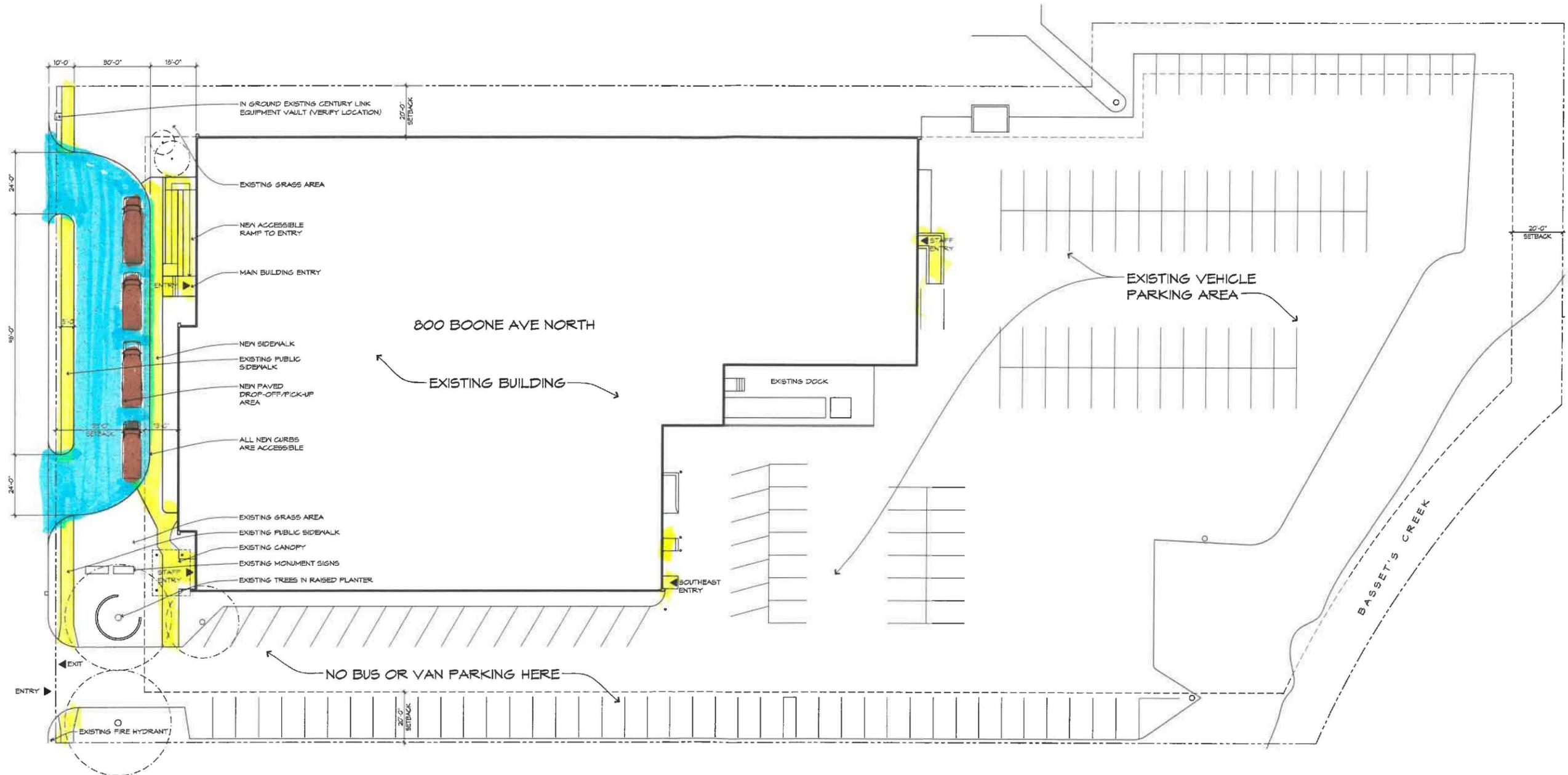
NO.	DATE	REVISION

OCTOBER 23, 2019

Improved Bus and Van Drop-Off/Pick-Up
 for ProPartners
 800 Boone Avenue North
 Golden Valley, Minnesota

B2#1923

BOONE AVENUE NORTH



B PROPOSED SITE PLAN
 OPTION B: ONSITE DRIVE
 1" = 20'-0"

COMPANY: BII BUELOW 2 ARCHITECTS, INC.
 I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY
 ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND
 THAT I AM A DULY LICENSED ARCHITECT UNDER THE LAWS OF THE
 STATE OF MINNESOTA
 Ryan L. Egan
 REGISTRATION NUMBER: 13331
 DATE:

BII BUELOW 2 ARCHITECTS, INC.
 2905 DEAN PARKWAY, SUITE A
 MINNEAPOLIS, MINNESOTA 55416
 (612) 455-2626

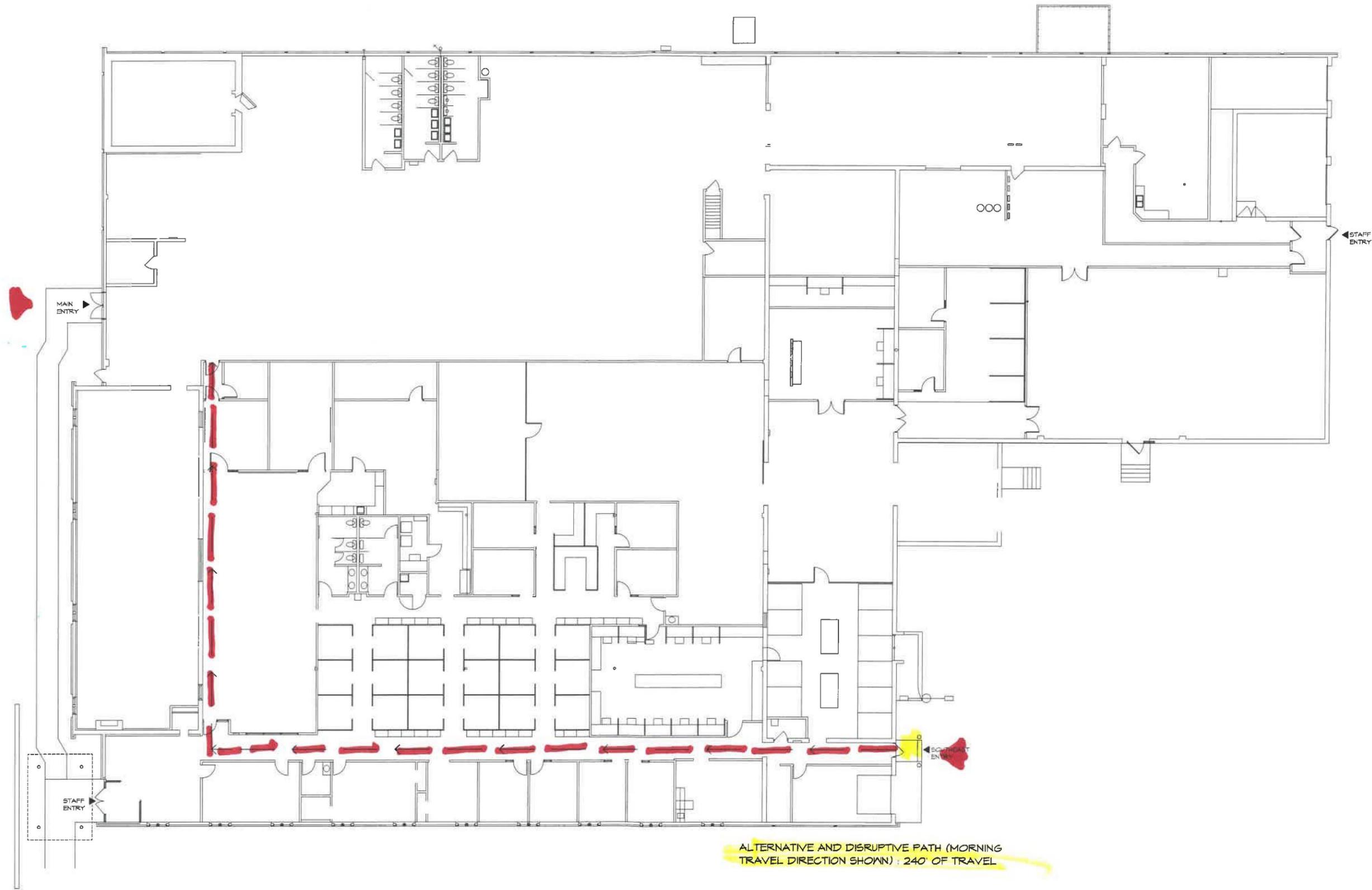
NO.	DATE	REVISION

OCTOBER 23, 2019

Improved Bus and Van Drop-Off/Pick-Up
 for Partners
 800 Boone Avenue North
 Golden Valley, Minnesota

B2#1923

B



ALTERNATIVE AND DISRUPTIVE PATH (MORNING TRAVEL DIRECTION SHOWN) : 240' OF TRAVEL

3 EXISTING FLOOR PLAN
 3/32"=1'-0"
 0 10' 20'

COPYRIGHT © 2019 BUIETOW 2 ARCHITECTS, INC.
 I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY A
 QUALIFIED ARCHITECT UNDER THE LAWS OF THE
 STATE OF MINNESOTA
 Randy L. Engel
 REGISTRATION NUMBER: 11311
 DATE:

BII BUIETOW 2 ARCHITECTS, INC.
 2905 DEAN PARKWAY, SUITE A
 MINNEAPOLIS, MINNESOTA 55416
 (612) 455-2626

NO.	DATE	REVISION

OCTOBER 23, 2019

Improved Bus and Van Drop-Off/Pick-Up
 for ProPartners
 800 Boone Avenue North
 Golden Valley, Minnesota

B2#1923



MEMORANDUM
Physical Development Department
763-593-8095 / 763-593-8109 (fax)

Date: December 9, 2019
To: Golden Valley Planning Commission
From: Jason Zimmerman, Planning Manager
Subject: Proposed Adjustments to Narrow Lot Regulations

Summary

The City Council has directed the Planning Commission to engage in discussion around the zoning regulations for narrow lots (generally those under 65 feet in width and specifically for those 50 feet or less in width) and to propose any recommended changes to help mitigate impacts on surrounding properties.

At this meeting, staff has invited three individuals from local design/build firms to provide information to the Planning Commission about the impacts of setback, building width, and height regulations on the construction of single-family homes on narrow lots. In addition, staff will provide an overview of lot coverage and impervious surface requirements from peer cities and discuss issues related to garage design on narrow lots.

Architect/Builder Information

Doug Cutting, of Greenwood Design Build, and Gary Aulik and Charlie Peterson, of Aulik Design Group, agreed to participate in a discussion with the Planning Commission about the challenges of building on narrow lots and the potential impacts of increasing setbacks, limiting building width, and capping height on the layout and floorplans of single-family homes.

Staff asked the architects/builders to consider the following questions:

- What are the primary challenges when building a new home on a 40 or 50 foot wide lot?
- What are the key building widths to keep in mind for common interior layouts? What happens to layouts as building width decreases?
- What are the design pros and cons when building single-story vs. one-and-a-half or two-story homes?
- Which home types or styles on narrow lots are the most popular in the current market? How are people utilizing narrow/smaller lot homes to fit their lifestyles?

- For narrow lots without an alley, what options for car storage exist? How does an attached garage affect livable space in the home?
- Are there design elements that can help reduce impacts on neighboring properties when homes on narrow lots are close to one another (light, privacy, massing, runoff, etc.)?

Lot Coverage/Impervious Limits

Staff followed up on a past conversation about stormwater management by examining the requirements around lot coverage and impervious surfaces. In Golden Valley, the maximum percentage of a lot that can be covered by buildings or structures (lot coverage) increases as the lot area decreases. The smallest tier (those under 5,000 square feet or roughly a 50 foot by 100 foot lot) allows up to 40% of the lot to be covered. The impervious limit for all single-family lots in the city is 50%, which includes driveways, walks, patios, and swimming pools in addition to buildings.

Information from Peer Cities

Staff gathered information about lot coverage and impervious limits for comparison to Golden Valley’s regulations.

City	Maximum Lot Coverage	Impervious Limits
Golden Valley	10,000 sq ft or more – 30% 5,000 to 9,999 sq ft – 35% Under 5,000 sq ft – 40%	50% of lot area
St. Louis Park	35%	---
Robbinsdale	---	---
Crystal	---	Rear yard only – 50% to 75% depending on size of yard
Richfield	35%	45% of lot area
Roseville	50% of lot may be “improved” with paved surfaces, building footprints, and other structures, but impervious surfaces within this area are limited to 30%	
Edina	9,000 sq ft or more – 25% Under 9,000 sq ft – 30%	---
Minneapolis	45%	60% of lot area

Site Design

One area of additional challenge when designing for narrow lots is that of providing adequate garage space. Golden Valley’s R-1 zoning requires a two car garage be constructed or the submission of a survey that shows that a conforming two-stall garage could be added. When building on a narrow lot of 40 feet – using current side yard setbacks of 4 feet and 8 feet – there are only 28 feet of building width available. Assuming a two car garage uses up at least 22 feet, that leaves only 6 feet of the façade on which to construct a front entry. The result is a garage dominated streetscape, especially on a block with many 40 foot lots in a row.

The problem can be lessened if the block has an accessible alley since the garage is able to be located to the rear of the lot. However, only a handful of blocks in the city have alleys.

It should be noted that the updated R-2 zoning district, which has a minimum lot width of 50 feet, requires only a one car garage and limits the width of a garage on the front wall to 65 percent of the width of the façade.

Solar Access (Shading)

Residents have expressed concern over the shade created by a new two-story home when it is constructed adjacent to a lot with a one-story home. Language in Minnesota Statute 462.357 allows cities to regulate access to direct sunlight – but this is limited to sunlight for solar energy systems (“a set of devices whose primary purpose is to collect solar energy and convert and store it for useful purposes including heating and cooling buildings or other energy-using processes, or to produce generated power by means of any combination of collecting, transferring, or converting solar-generated energy”) and not authorize regulation for access to direct sunlight for other purposes (such as for enjoyment).

As a result, access to direct sunlight is typically protected only as a byproduct of regulations that dictate setbacks, height, and overall massing.

Next Steps

As part of the ongoing investigation of narrow lots, Commissioners should keep in mind the following questions:

1. What are the key takeaways from the information discussed with local architects and builders?
2. Are the City’s regulations around lot coverage and impervious limits sufficient to allow for adequate stormwater management? Would strengthening these requirements have a negative impact on the type of home that could be built on a narrow lot?
3. Should modifications to the zoning regulations around garage sizes be considered for narrow lots? Are there changes that could be implemented that would result in a more aesthetically pleasing streetscape?
4. Are there techniques that could be employed to help ensure access to direct sunlight for properties adjacent to narrow lots?

The Planning Commission is scheduled to hold its next regular meeting on January 13. Depending on the length of the agenda, a discussion of Narrow Lots may be included. Regardless, a public forum on the topic has been set for Thursday, January 16, in the Council Chambers.

Communications staff is working to publicize this event as well as to create an on-line survey to gather comments and feedback on the topic. It is expected that the Planning Commission will review the results of this event at its regularly scheduled meeting on January 27 and begin moving towards drafting recommendations for the City Council.



MEMORANDUM

Physical Development Department

763-593-8095 / 763-593-8109 (fax)

Date: December 9, 2019

To: Golden Valley Planning Commission

From: Myles Campbell, Planner

Subject: Zoning Code Text Amendment – Discussion – Amending Zoning Districts to Regulate Tobacco Sales

Summary

Following their approval of revisions to the City’s licensing ordinance regarding tobacco sales, the City Council has asked staff and the Planning Commission to consider further amendments to the City’s zoning code. Changes to the zoning code would primarily focus on the proximity of tobacco-based retail stores to one another and from places of assembly. Additionally, Council requested some exploration into the regulation of signs or advertisement of tobacco goods. Based on investigation of the zoning codes of other metro cities and in consultation with the City Attorney, staff is proposing to amend the Commercial zoning district and potentially the Mixed Use district to create new requirements for tobacco sales.

Background

As part of the 2019 goal setting process, the City Council directed staff to study the issue of tobacco sales regulation and present options for amending the tobacco licensing ordinance. The goal for this work is to end up with a more up-to-date City Code that is responsive to the public health risks posed by tobacco to all residents but especially to children and at-risk communities. At the same time though, it is also the responsibility of the City to make sure these amendments do not overly damage business owners trying to conduct and grow their businesses in the city.

Following this direction, staff conducted several months of research and community engagement, reviewing ordinances from peer communities and national studies, as well as collecting resident and business owner to gauge the public interest on stiffening tobacco sales regulation. The first round of amendments, relating to licensing regulations, were approved at the Council meeting on October 15, 2019. At the meeting, City Council approved changes to the City Code regarding the requirements to obtain a license for tobacco sales. Among the changes approved, some key elements included:

- Updating the definitions to encompass new technology and trends
- Prohibiting the sale of flavored tobacco
- Prohibiting sales to people under 21 years-of-age
- Capping the total licenses to be issued across the city at eight

In addition to the new licensing requirements, the Council was also interested in seeing further regulations introduced to the zoning code. Through zoning rather than licensing, the City has options available to help direct the location of businesses based on the allowed land uses or other considerations such as proximity to schools or places of assembly. Studies into the impact of local tobacco regulation has shown that a combination of location and licensing regulation have the greatest impact on limiting youth exposure and initiation in regard to tobacco.

Evaluation

Many communities in the Twin Cities Metro have recently adopted stricter licensing and age requirements for tobacco sales, such as Edina, Plymouth, St. Louis Park or Mendota Heights. However, it has so far been less common to see changes made to zoning codes to limit the density or location of tobacco-related businesses. Both Minneapolis and Saint Paul have requirements for minimal distance between two tobacco retailers, though neither has a spacing requirement from schools or other youth-oriented facilities.

Minneapolis	Saint Paul
Except in the B4 zoning district, no tobacco dealers license shall be issued for an establishment authorized to sell flavored tobacco products pursuant to section 281.45(f), for a location, the main entrance of which is within a radius of two thousand (2,000) feet from the main entrance of an existing establishment holding a tobacco dealers license and authorized to sell flavored tobacco products.	No tobacco products shop shall be located within one-half (½) mile (2,640 feet) of another tobacco products shop.

Certain other cities such as Plymouth do not include a requirement to be a certain distance from other uses, but do restrict tobacco retailers to only certain Commercial zoning districts. Given the slow rate of adoption for location based regulation of tobacco sales in the region, there is less available comparative sources for review. Attached to this memo is a model ordinance provided by the Public Health Law Center. City staff made significant use of this model ordinance in amending the newly-adopted licensing ordinance, and it will continue to be a good source moving ahead with zoning. Based on the model ordinance, exiting research, and the work done last year for firearm sales, staff has identified three main areas of code review.

Permitted Districts

The first and most straightforward use of zoning in the case of tobacco regulation is to determine which of the City’s zoning districts should allow licensed tobacco retailers. This might also involve identifying certain zoning districts that might allow licensed tobacco retailers only with certain

restrictions, or districts which may allow for retailers via conditional use permit. Commercial and Mixed Use are the most likely candidates to allow for tobacco retailers to at least some degree.

Proximity Restrictions

A major tool to combat over-densification of tobacco retailers, and one that is underutilized in the Metro region, is to restrict future retailers based on their proximity to other types of uses such as schools or from other tobacco retailers. By attaching proximity restrictions to the zoning of a particular parcel, the City can limit the ability of tobacco retailers to locate near or target youth populations. The appropriate amount of separation required for each is not an exact science but is ultimately dependent on how many viable sites are available at the conclusion of the exercise and if this number is legally defensible.

Site Requirements

A final consideration for the Planning Commission is whether any particular site restrictions make sense in the case of tobacco retailers.

Summary of Recommendations

Staff would like feedback from the Commission regarding the many options available for regulating the location of tobacco sales, including limiting possible locations and other use restrictions. A public hearing will be required at a subsequent meeting.

The key questions that staff feels should guide this discussion would include:

1. Which zoning districts should tobacco sales be allowed in? Is it a permitted use with restrictions or approved via a conditional use permit?
2. Should the City regulate the density of tobacco retailers (require retailers to be a set minimum distance apart)?
3. Should the City regulate the location of tobacco retailers (require a minimum distance from schools, parks, etc.)?
4. What distances should be used in either a density or location regulation to ensure that it is still possible to locate a tobacco business in the city?
5. What type of site requirements might be applicable to a tobacco-related business?

Attachments

Excerpt from City Council Agenda dated October 15, 2019 (28 Pages)

Excerpt from City Council Minutes dated October 15, 2019 (2 Pages)

Public Health Law Center MN Model Ordinance (22 Pages)

Tobacco Sales Buffer Maps (5 Pages)



EXECUTIVE SUMMARY

City Administration

763-593-8006 / 763-593-8109 (fax)

Golden Valley City Council Meeting October 15, 2019

Agenda Item

6. A. Second Consideration of Tobacco Licensing and Regulation Ordinance

Prepared By

Maria Cisneros, City Attorney
Kris Luedke, City Clerk

Summary

The City of Golden Valley has the authority to license the sale of tobacco and related products in the City. As part of the 2019 goal setting process, the City Council directed staff to study the issue of tobacco sales regulation and present options for amending the tobacco licensing ordinance. (See [City Code, Art. VI.](#))

Staff has spent the last several months studying tobacco sales regulation, discussing the topic with the City's Public Health Department (Hennepin County Public Health), engaging local tobacco retailers, and gathering input from residents and other community members.

Through this public input process, the City received extensive input from the community, which is summarized in a [Community Input Report](#) prepared by the Communications Department. The Community Input Report, Council/Manager meeting agendas and survey results are all available on the City's website ([click here](#)).

At the August 13 and September 10 Council/Manager meetings, the Council reviewed the community input and directed staff to draft a proposed ordinance incorporating the following new policies:

- Updating the definitions to encompass new technologies, nicotine products, and tobacco and nicotine delivery devices
- Prohibiting the sale of flavored tobacco, including menthol, at all retailers
- Prohibiting the sale of tobacco at pharmacies
- Prohibiting the sale of tobacco to people under 21 and requiring retailers to post signs stating the legal age requirements
- Capping the amount of tobacco licenses issued by the City at 8
- Increasing the minimum price for certain tobacco products from \$2.00 to \$3.00
- Prohibiting free samples
- Requiring liquid nicotine products to be sold in child proof packaging
- Allowing additional compliance checks to ensure compliance with the new legal age requirements
- Updating the licensing requirements, grounds for denial and penalties for violation to more

closely match similar requirements in other licensing sections of City Code

- Updating the license application and background check processes to more closely match similar requirements in other licensing sections of City Code

The first consideration was presented at the October 2, 2019, City Council meeting. ([click here](#)) If the Council adopts the ordinance on second consideration, the new ordinance would be effective after publication on January 1, 2020. Current license holders would not be affected until the next licensing cycle.

If the second consideration is adopted, staff recommends the Council approve the attached summary publication of the ordinance. To approve summary publication the Council must determine that publication of the title and a summary of the ordinance would clearly inform the public of the intent and effect of the ordinance.

Financial or Budget Considerations

The new regulations in the ordinance will increase the cost of enforcing tobacco sales regulations in the City. Specifically, the Police Department will conduct additional compliance checks to ensure tobacco is not sold to people between 18 and 20 and to ensure no prohibited products (such as flavored tobacco) are offered for sale. Staff recommends increasing the license fee from \$275 to \$450 to cover these increased enforcement costs. This increase will be reflected in the proposed 2020 fee schedule, which is scheduled for consideration at the October 15 and November 6 Council Meetings.

Recommended Action

Motion to adopt second consideration Ordinance #670, Repealing in its Entirety Article VI. Tobacco and Adding a New Article VI. Tobacco Licensing and Regulation.

Motion to approve Summary of Ordinance #670 for Publication based on the finding that the title and summary clearly inform the public of the intent and effect of the ordinance.

Supporting Documents

- Comparison of Current Tobacco Licensing Ordinance and Proposed Tobacco Licensing Ordinance (15 pages)
- Ordinance #670, Repealing in its Entirety Article VI. Tobacco and Adding a New Article VI. Tobacco Licensing and Regulation (11 pages)
- Summary of Ordinance #670 (1 page)

=

Comparison of Current Tobacco Ordinance and Proposed Tobacco Ordinance

ARTICLE VI. - TOBACCO

Sec. 16-157. - Purpose and Intent.

Because the City recognizes that ~~many persons under the age of 18 years purchase or otherwise obtain, possess and use tobacco, tobacco products~~ the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine ~~or lobelia delivery devices, and the sales, possession, and use are violations of or lobelia delivery products to persons under the age of 18 violates~~ both State and Federal laws; and because studies, which the City ~~hereby~~ accepts and adopts, have shown that ~~most~~ youth use of any commercial tobacco product has increased to 26.4% in Minnesota; and because nearly 90% of smokers begin smoking before they have reached the age of 18 years, and that ~~these persons who reach 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 alcohol flavors as a way to target youth and young adults and that the age presence of 18 years without having started smoking are significantly less likely to begin smoking such~~ flavors can make it more difficult to quit; and because studies show that youth and young adults are especially susceptible to commercial tobacco product availability, advertising, and price promotions at tobacco retail environments; and because smoking commercial tobacco use has been shown to be the cause of ~~several~~ many serious health problems which subsequently place a financial burden on all levels of government; ~~this article shall be~~ ordinance is intended to regulate the sale, ~~possession and use of commercial tobacco, tobacco products~~, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery ~~devices~~ products for the purpose of enforcing and furthering existing laws, to protect ~~minors~~ youth and young adults against the serious health effects associated with ~~the illegal tobacco use of tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery devices and initiation~~, and to further the official public policy of the ~~State in regard~~ state to ~~preventing~~ prevent young people from starting to smoke, as stated in Minn. ~~Stat~~ Stat ~~92A.01~~

In making these findings, the City Council accepts the conclusions and recommendations of the U.S. Surgeon General reports, E-cigarette Use Among Youth and Young Adults (2016), The Health Consequences of Smoking -50 Years of Progress (2014) and Preventing Tobacco Use Among Youth and Young Adults (2012); the Centers for Disease Control and Prevention in their ~~study~~ studies, Tobacco Use Among Middle and High School Students -United States, 2011-2015 (2016), and Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997," (1998); and of the following ~~medical professionals~~ scholars in these ~~medical~~ scientific journals: ~~Khuder SA, Chen, et al., "& Millar, W. J., Age at Smoking Onset and Its Effect on Smoking Cessation," Addictive Behavior 24(5):673-7, September-October 1999~~ of smoking initiation: implications for quitting. HEALTH REPORTS, 9(4), 3946 (1998); D'Avanzo, B., et al., "La Vecchia, C., & Negri, E., Age at Starting Smoking and Number of Cigarettes Smoked," ANNALS OF EPIDEMIOLOGY, 4(6):, 455-59, November 1994; Chen, J & Millar, WJ, "Age of Smoking Initiation: Implications for Quitting," Health Reports 9(4):39-46, Spring 1998 459 (1994); Everett SA, et al S. A., "Warren, C. W., Sharp, D., Kann, L., Husten, C. G., & Crossett, L. S. Initiation of Cigarette Smoking and Subsequent Smoking Behavior Among U.S. High School Students," PREVENTIVE

MEDICINE, 29(5):, 327-33, November 1999; Giovino, G. A., Epidemiology of Tobacco Use in the United States, ONCOGENE, 21(48), 7326-7340 (2002); Khuder, S. A., Dayal, H. H., & Mutgi, A. B., Age at Smoking Onset and its Effect on Smoking Cessation, ADDICTIVE BEHAVIORS, 24(5), 673-677 (1999); Luke, D. A., Hammond, R. A., Combs, T., Sorg, A., Kasman, M., Mack-Crane, A., Henriksen, L., Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density, AMERICAN JOURNAL OF PUBLIC HEALTH, 107(5), 740-746 (2017); MINNESOTA DEPARTMENT OF HEALTH, DATA HIGHLIGHTS FROM THE 2017 MINNESOTA YOUTH TOBACCO SURVEY, SAINT PAUL, MN (2018); Tobacco Control Legal Consortium, The Verdict Is In: Findings from United States v. Phillip Morris, The Hazards of Smoking, University of California - San Francisco (2006); Truth Tobacco Industry Documents, <https://www.industrydocumentslibrary.ucsf.edu/tobacco/>; Xu, X., Bishop, E. E., Kennedy, S. M., Simpson, S. A., & Pechacek, T. F., Annual Healthcare Spending Attributable to Cigarette Smoking: An Update, AMERICAN JOURNAL OF PREVENTIVE MEDICINE, 48(3), 326-333 (2015), copies of which are adopted by reference.



Sec. 16-158. - Definitions.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. 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:

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."

Cigar. Any roll of tobacco that is wrapped in tobacco leaf or in any other substance containing tobacco, with or without a tip or mouthpiece, which is not a cigarette as defined in Minn. Stat. ~~91B~~ as may be amended from time to time.

Compliance Checks: The system the City uses to investigate and ensure that those authorized to sell ~~tobacco, tobacco~~licensed products, ~~tobacco-related devices, and nicotine or lobelia delivery devices~~ are following and complying with the requirements of this article. Compliance checks shall involve the use of ~~minors as authorized by this article. The term "compliance checks" shall also mean~~persons under the use of ~~minors~~21 who ~~purchase or attempt to purchase tobacco, tobacco~~licensed 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 ~~the City or other units of government for the purpose of~~for educational, research, and training purposes, or for investigating or enforcing ~~appropriate~~ Federal, State or local laws and regulations relating to ~~tobacco, tobacco~~licensed products, ~~tobacco-related devices, and nicotine or lobelia delivery devices.~~

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 product that has been approved or certified by the U.S. Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.

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 percent 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.

Licensed Product: The term that collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

Loosies: ~~The common term used to refer to a~~ Loosies means (1) single or individually packaged cigarette or cigars or cigarettes offered for sale, regardless of whether they have been removed from their original retail packaging, and (2) any other tobacco licensed product that has been removed from its original retail packaging and sold individually. The term "loosies" offered for sale. Loosies does not include individual cigars with a retail price, after any discounts are applied and before any sales taxes are imposed, of ~~more than~~ at least \$2.00 ~~3.00~~ per cigar.

Minor: ~~Any natural person who has not yet reached the age of 18 years.~~

Moveable Place of Business: Any form of business operated out of a kiosk, 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.

Nicotine or Lobelia Delivery ~~Devices~~ Product: Any product containing or delivering nicotine or lobelia intended for human consumption, 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 ~~including~~include any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration ~~for as a tobacco-use cessation product, harm-reduction a tobacco dependence product,~~ or for other medical purposes, and is being marketed and sold solely for that approved purpose.

Pharmacy. A place of business at which prescription drugs are prepared, compounded, or dispensed by or under the supervision of a pharmacist and from which related clinical pharmacy services are delivered.

Retail Establishment: Any place of business where ~~tobacco, tobacco licensed~~ products, ~~tobacco-related devices, or nicotine or lobelia delivery devices~~ are available for sale to the general public. ~~The term "retail establishment" shall include, including,~~ but not be limited to, grocery stores, tobacco products shops, convenience stores, gasoline service stations, bars, and restaurants, ~~and drug stores.~~

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

Self-Service Merchandising: Open displays of ~~tobacco, tobacco licensed~~ products, ~~tobacco-related devices, or nicotine or lobelia delivery devices~~ in any manner where any person ~~shall have~~has access to the ~~tobacco, tobacco licensed~~ products, ~~tobacco-related devices, or nicotine or lobelia delivery devices,~~ without the assistance or intervention of the licensee or the licensee's employee. ~~The assistance~~Assistance or intervention ~~shall entail~~means the actual physical exchange of the ~~tobacco, tobacco licensed~~ product, ~~tobacco-related device, or nicotine or lobelia delivery device~~ between the customer and the licensee or employee. ~~Self-service sales are interpreted as being any sale where there is not an actual physical exchange of the product between the clerk and the customer.~~

Smoking: Inhaling ~~or,~~ exhaling ~~smoke from any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product. The term "smoking" also includes, burning, or~~ carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant product, whether natural or synthetic, that is intended for inhalation. ~~For the purpose of this article, the definition of smoking includes the use of electronic cigarettes, including the inhaling and exhaling of vapor from any~~Smoking also includes carrying or using an activated electronic delivery device ~~and~~and

Tobacco or Tobacco Products: ~~Tobacco and tobacco products includes cigarettes, e-cigarettes and any.~~ Any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product including but not limited to 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 sweepings of tobacco; and other kinds and forms of tobacco. ~~The term "tobacco" excludes~~Tobacco does not include any ~~tobacco~~ product that has been approved by the ~~United States~~U.S. 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.

Tobacco-Related Devices: ~~Includes any tobacco product as well as a pipe, e-cigarette,~~ Device. Any

rolling papers, ~~ashtraywraps, pipes,~~ or other device intentionally designed or intended to be used ~~in a manner which enables the chewing, sniffing or smoking~~with tobacco products. Tobacco related device includes 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~~that dispenses ~~tobacco, tobacco~~licensed 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~~licensed product ~~or tobacco-related device~~.

~~EXAMPLE~~

Sec. 16-159. - License.

- (a) ~~(a)~~ *License Required.* No person shall sell or offer to sell any ~~tobacco, tobacco products, tobacco-related device, or nicotine or lobelia delivery device~~licensed product without first having obtained a license to do so from the City.
- (b) ~~(b)~~ *Application.* An application for a license to sell ~~tobacco, tobacco~~licensed products, ~~tobacco-related devices, or nicotine or lobelia delivery 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. 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~~determines that an application is incomplete, ~~he/she~~they shall return the application to the applicant with notice of the information necessary to make the application complete.

A business applicant, at the time of application, shall furnish the City with a list of all persons that have an interest of five percent or more in the business. The list shall name all owners and show the interest held by each, either individually or beneficially for others. It is the duty of each business licensee to notify the City Clerk in writing of any change in ownership in the business. Any change in the ownership or control of the business shall be deemed equivalent to a transfer of the license, and any such license shall be revoked 30 days after any such change in ownership or control unless the licensee has notified the Council of the change in ownership by submitting a new license application for the new owners, and the Council has approved the transfer of the license by appropriate action. Any time an additional investigation is required because of a change in ownership or control of a business, the licensee shall pay an additional investigation fee to be determined by the City. The City may at any reasonable time examine the transfer records and minute books of any business licensee to verify and identify the owners, and the City may examine the business records of any other licensee to the extent necessary to disclose the interest which persons other than the licensee have in the licensed business. The Council may revoke any license issued upon its determination that a change of ownership of a licensee has actually resulted in the change of control of the licensed business so as materially to affect the integrity and character of its management and its operation, but no such action shall be taken until after a hearing by the Council on notice to the licensee.

- (c) ~~(c)~~ *Action.* The City Council may either approve or deny the application for a 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~~approves 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. If a license application is denied, the earliest an applicant may reapply is 12 months from the date the license is denied.

~~(d)~~ ~~(e)~~ *Term.* All licenses issued under this article shall be valid for one calendar year from the date of issue.

~~(e)~~ ~~(e)~~ *Revocation or Suspension.* Any license issued under this article may be revoked or suspended as provided in Section 16-168.

~~(f)~~ ~~(f)~~ *Transfers.* All licenses issued under this article 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~~The transfer of any license to another location or person ~~shall be valid without the prior approval of the City Council~~is prohibited.

~~(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 article.~~

~~(h)~~

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

~~(h)~~ ~~(i)~~ *Renewals.* The renewal of a license issued under this article 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)~~ ~~(j)~~ *Issuance As a Privilege and Not a Right.* The issuance of a license issued under this article ~~shall be considered~~is a privilege and ~~not an absolute right of the applicant and shall~~does not entitle the license holder to ~~an~~ automatic renewal of the license.

~~(k)~~ ~~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 and tobacco-related products is prohibited.~~



~~State Law reference - Michigan MSB~~

~~(j)~~ *Maximum Number of Licenses.* The number of licenses issued under this section shall be capped at the number of licenses in place on January 1, 2020. Any decrease in the number of licenses that occurs after January 1, 2020 due to attrition will decrease the number of available licenses to that extent until the number of available licenses reaches 8. 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 existing licenses are not renewed or are revoked. A new applicant who has purchased a business location holding a valid license will be entitled to first priority, provided the new applicant meets all other application requirements in accordance with this ordinance.

Sec. 16-160. - Fees.

No license shall be issued under this article until the appropriate license fee shall be paid in full. The fee for a license under this article shall be established by the City Council and adopted ~~by ordinance~~ in the City fee schedule, and may be amended from time to time.



Sec. 16-161. ~~Ineligibility and~~ Basis for Denial of License.

~~(a)~~

(a) Ineligibility.

(1) Pharmacies. No existing license will be eligible for renewal to any pharmacy, including any retail establishment that operates or contains an on-site pharmacy, and no pharmacy or any retail establishment that operates an on-site pharmacy will be granted a new license.

(2) 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 article.

(b) Grounds for Denial. Grounds for denying the issuance or renewal of a license under this article include, but are not limited to, the following:

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

(2) The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation from holding a license.

(3) ~~(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,~~ tobacco~~licensed~~ products, ~~tobacco-related devices, or nicotine or lobelia delivery devices.~~

(4) ~~(3)~~–The applicant has had a license to sell ~~tobacco, tobacco~~licensed products, ~~tobacco-related devices, or nicotine or lobelia delivery devices~~ suspended or revoked ~~within~~during the 12 ~~months~~ preceding ~~12 months of~~ the date of application, or the applicant has or had an interest in another premises authorized to sell licensed products, whether in the City or in another jurisdiction, that has had a license to sell licensed products suspended or revoked during the same time period, provided the applicant had an interest in the premises at the time of the revocation or suspension, or at the time of the violation that led to the revocation or suspension.

(5) The applicant is a business that does not have an operating officer or manager who is eligible pursuant to the provisions of this chapter.

(6) The applicant is the spouse of a person ineligible for a license pursuant to the provision of Subsections (b)(2) and (3) of this section or who, in the judgement of the Council, is not the real party in interest or beneficial owner of the business to be operated, under the license.

~~(7) (4)~~ The applicant fails to provide any information required on the application, or provides false or misleading information. Any false statement on an application, or any willful omission of any information called for on such application form, shall work an automatic refusal of license, or if already issued, shall render any license issued pursuant thereto void and of no effect to protect the applicant from prosecution for violation of this chapter, or any part thereof.

~~(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)~~

(c) The City shall conduct a background investigation on all new applications and applications to transfer a license. The City may conduct a background and financial check on an application for a renewal of a license if it is in the public interest to do so. 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 article and the City shall provide the person with a notice of revocation, along with information on the right to appeal.

(d) No license shall be granted or renewed for operation on any premises on which real estate taxes, assessments, or other financial claims of the City or of the State are due, delinquent, or unpaid. If an action has been commenced pursuant to the provisions of Minn. Stats. ch. 278, questioning the amount or validity of taxes, the Council may, on application by the licensee, waive strict compliance with this provision; no waiver may be granted, however, for taxes, or any portion thereof, which remain unpaid for a period exceeding one year after becoming due unless such one-year period is extended through no fault of the licensee.



Sec. 16-162. - Prohibited ~~Sales~~Acts.

~~(a) In general. No person~~ shall ~~be a violation of this article for any person to~~ sell or offer to sell any ~~tobacco, tobacco licensed~~ product, ~~tobacco-related device, or nicotine or lobelia delivery device:~~

~~(1) To any person under the age of 18 years.~~

~~(2)~~

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

~~(3) By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premises 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.~~

~~(4)~~

(2) By means of self-service merchandising.

- (3) By means of loosies as defined in Section 16-158.
- (4) ~~(5)~~—Containing opium, morphine, jimson weed, ~~bella-donna~~belladonna, 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.
- (5) That is 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.
- (6) ~~(6)~~—By any other means, to any other person, on in any other manner or form prohibited by ~~Federal, State~~federal, state or other local law, ordinance provision, or other regulation.
- (b) Legal Age. No person shall sell any licensed product to any person under the age of 21.
- (1) Age verification. Licensees shall verify by means of government issued photographic identification 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.
- (2) Signage. Notice of the legal sales age and age verification requirement 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.
- (c) Flavored Products. No person shall sell or offer for sale any flavored products.
- (d) Minimum Cigar Price. No person shall sell or offer to sell any Cigar, sold individually or as a multi-unit package, and regardless of whether it is within its intended retail packaging, for a sales price, after any discounts are applied and before sales taxes are imposed, of less than \$3.00 per Cigar.
- (e) Smoking Prohibited. Smoking, including smoking for the purpose of sampling of licensed products, is prohibited within the indoor area of any retail establishment licensed under this ordinance.
- (f) Samples Prohibited. No person shall distribute samples of any licensed product free of charge or at a nominal cost.



(a) *Storage.* All ~~tobacco, tobacco~~licensed products, ~~tobacco-related devices, and nicotine or lobelia delivery 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.



Sec. 16-164. - Responsibility.

All licensees ~~under this article shall be~~are 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, offer to sell, and furnishing of licensed products~~ on the licensed premises, ~~and the. The sale of an item, offer to sell, or furnishing of any licensed product~~ by an employee shall be considered ~~a sale by an act of the license holder~~licensee. Nothing in this ~~article~~section shall be construed as prohibiting the City from also subjecting the ~~clerk~~employee to ~~whatever any civil~~ penalties ~~are~~that the City deems to be appropriate under this ~~article, State ordinance, state~~ or ~~Federal~~federal law, or other applicable law or regulation.



Sec. 16-165. - 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 twice per year, the City shall conduct compliance checks. All premises licensed under this subdivision shall be open to inspection by the city during regular business hours. From time to time, but at least once per year, the City shall conduct compliance checks ~~by engaging, In accordance with state law, the written consent of their parents or guardians, minors over~~City will conduct at least one compliance check that involves the participation of one person between the age ~~ages~~ of 15 ~~years but less than 18 years to enter the licensed premises to attempt to purchase tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices. Minors used for the purpose of compliance checks shall be supervised by city designated law enforcement officers or other designated city personnel. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices when those items are obtained as a part of the compliance check. and 17 and may~~ conduct an additional compliance check involving one person between the ages of 18 and 20.

No ~~minor~~person used in compliance checks shall attempt to use a false identification misrepresenting ~~the minor's~~their age, ~~and all minors. All persons~~ lawfully engaged in a compliance check shall answer all questions about ~~the minor's~~their age asked by the licensee or ~~his/her~~their employee, and ~~shall~~ produce any identification, if any exists, for which ~~he/she is~~they are asked. Persons used for the purpose of compliance checks shall be supervised by law enforcement or other designated personnel. Minors used for compliance checks shall not be guilty of unlawful possession licensed products when those items are obtained as a part of the compliance check. Nothing in this article shall prohibit compliance checks authorized by ~~State~~state or ~~Federal~~federal laws for educational, research, or training purposes, or required for the enforcement of a particular State or Federal law.



~~State Law reference -~~ CHS 15

Additionally, from time to time, the City will conduct inspections to determine compliance with any or all other aspects of this ordinance.

Sec. 16-166. - Other ~~Illegal~~Prohibited Acts.

Unless otherwise provided, the following acts shall be a violation of this article:

- ~~(1) *Illegal Sales.* It shall be a violation of this article for any person to sell or otherwise provide any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device to any minor.~~
- ~~(2) *Illegal Possession.* It shall be a violation of this article for any minor to have in his/her possession any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device. This subsection shall not apply to minors lawfully involved in a compliance check.~~
- ~~(3) *Illegal Use.* It shall be a violation of this article for any minor to smoke, chew, sniff or otherwise use any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device.~~
- ~~(4)~~
- (a) *Illegal Procurement.* It shall be a violation of this article for any ~~minor~~person 21 years of age or older to purchase ~~or attempt to purchase~~, or otherwise obtain any ~~tobacco, tobacco~~licensed product, ~~tobacco-related device, or nicotine or lobelia delivery device, and it shall be a violation of this article for any person to purchase or otherwise obtain those items~~ on behalf of a ~~minor~~person under the age of 21. It shall ~~further~~also be a violation for any person 21 years of age or older to coerce or attempt to coerce a ~~minor~~person under the age of 21 to ~~illegally purchase or otherwise obtain or use~~attempt to purchase any ~~tobacco, tobacco~~licensed product, ~~tobacco-related device, or nicotine or lobelia delivery device. This subsection shall not apply to minors lawfully involved in a compliance check.~~
- (b) ~~(5)~~ *Use of False Identification.* It shall be a violation of this article for any ~~minor~~person to ~~attempt to disguise his/her true age by the use of a false~~any form of ~~false~~ identification, whether the identification is that of another person or one ~~on which the age of the person that~~ has been modified or tampered with to represent an age older than the actual age of the person using that identification.



Sec. 16-167. - Exceptions and Defenses.

Nothing in this article shall prevent the providing of tobacco, ~~tobacco products, or~~ tobacco-related devices, ~~or nicotine or lobelia delivery devices~~ to a ~~minor~~any person as part of ~~a~~an indigenous practice or lawfully recognized religious, spiritual, or cultural ceremony or practice. It shall be an affirmative defense to the violation of this article for a person to have reasonably relied on proof of age as described by ~~State~~state law.



~~State Law reference~~ ~~16-166~~

Sec. 16-168. - Violations and Penalty.

(a) ~~(a) Administrative Civil Penalties Individuals.~~ If a person who is not a licensee is found to have violated this article, the person shall be charged an administrative penalty as follows:

- (1) ~~(1) First Violation.~~ The Council shall impose a civil fine not to exceed \$50.00.
- (2) ~~(2) Second Violation Within 12 months.~~ The Council shall impose a civil fine not to exceed \$100.00.
- (3) ~~(3) Third Violation Within 12 months.~~ The Council shall impose a civil fine not to exceed \$150.00.

(b) ~~(b) Same Licensee.~~ If a licensee or an employee of a licensee is found to have violated this article, the licensee shall be charged an administrative penalty as follows:

- (1) ~~(1) First Violation.~~ The Council shall impose a civil fine of \$500.00 and suspend the license for not less than ~~five consecutive days~~ 1 day.
- (2) ~~(2) Second Violation Within 24 Months. The Council shall impose a civil fine of \$750.00 and suspend the license for not less than 15 consecutive days.~~
- (3) ~~Third Violation Within 24~~ 36 Months. The Council shall impose a civil fine of \$1,000.00 and suspend the license for not less than ~~30~~ 3 consecutive days.
- (3) ~~Third Violation Within 36 Months. The Council shall impose a civil fine of \$2,000.00 and suspend the license for not less than 10 consecutive days.~~
- (4) ~~(4) Fourth Violation Within 24~~ 36 Months. The Council shall revoke the license for at least one year.

(c) ~~(e) Administrative Penalty Procedures.~~ Notwithstanding anything to the contrary in this section:

- (1) ~~(1)~~ Any of the administrative civil penalties set forth in this section that may be imposed by the Council, may in the alternative be imposed by an administrative citation under Section 1-9.
- (2) ~~(2)~~ If one of the foregoing penalties is imposed by an action of the Council, no penalty shall take effect until the licensee or person has received notice (served personally or by mail) of the alleged violation and of the opportunity for a hearing before the Council, and such notice must be in writing and must provide that a right to a hearing before the Council must be requested within 10 business days of receipt of the notice or such right shall terminate.

(d) ~~(e) Misdemeanor Prosecution.~~ Nothing in this section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this article.

~~(e) Defense. Any person who is charged with a violation of this article shall have the right to a hearing before the Council.~~

~~(f) Exceptions. Any person who is charged with a violation of this article shall have the right to a hearing before the Council.~~

~~(g) Enforcement. Any person who is charged with a violation of this article shall have the right to a hearing before the Council.~~

~~State Law reference - Any person who is charged with a violation of this article shall have the right to a hearing before the Council.~~

~~Sec. 16-169. - Violation a Misdemeanor.~~

~~Every person who violates a section, subsection, paragraph or provision of this article, when such person-~~

~~performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as for a misdemeanor or gross misdemeanor and may also be subject to administrative penalties as otherwise stated in specific provisions.~~

~~CHAPTER~~

~~Secs. 16-170-16-191. — Reserved.~~

Sec. 16-169. - Severability.

If any section or provision of this ordinance is held invalid, such invalidity will not affect other sections or provisions that can be given force and effect without the invalidated section or provision.

Sec. 16-170 -Effective Date.

This ordinance becomes effective on January 1, 2020.

Document comparison by Workshare 10.0 on Friday, September 27, 2019
8:43:10 AM

Input:	
Document 1 ID	file:///L:\City Open Matters\Ordinances\Tobacco\ARTICLE VI. TOBACCO (Original).doc
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Document 2 ID	L:\City Open Matters\Ordinances\Tobacco\First Reading\ARTICLE VI. TOBACCO (Rev. 9.27.19).doc
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Rendering set	Standard

Legend:	
Insertion	
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Format change	
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Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	291
Deletions	256
Moved from	12
Moved to	12
Style change	0
Format changed	0
Total changes	571

ORDINANCE NO. 670
AN ORDINANCE AMENDING THE CITY CODE
Repealing in its Entirety Article VI. Tobacco and Adding a New Article VI. Tobacco
Licensing and Regulations

The City Council of the City of Golden Valley ordains as follows:

Section 1. City Code, Article VI entitled “Tobacco” is hereby repealed in its entirety.

Section 2. City Code, Article VI is hereby amended by adding a new Article VI. Tobacco Licensing and Regulation reading as follows:

ARTICLE VI. – TOBACCO

Sec. 16-157. - Purpose and Intent.

Because the City recognizes that the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 18 violates both state and federal laws; and because studies, which the City accepts and adopts, have shown that youth use of any commercial tobacco product has increased to 26.4% in Minnesota; and because nearly 90% of 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 alcohol 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 studies show that youth and young adults are especially susceptible to commercial tobacco product availability, advertising, and price promotions at tobacco retail environments; and because commercial tobacco use has been shown to be the cause of many serious health problems which subsequently place a financial burden on all levels of government, this ordinance is intended to regulate the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect youth and young adults against the serious health effects associated with tobacco use and initiation, and to further the official public policy of the state to prevent young people from starting to smoke, as stated in Minn. Stat. § 144.391, as it may be amended from time to time.

In making these findings, the City Council accepts the conclusions and recommendations of the U.S. Surgeon General reports, *E-cigarette Use Among Youth and Young Adults* (2016), *The Health Consequences of Smoking — 50 Years of Progress* (2014) and *Preventing Tobacco Use Among Youth and Young Adults* (2012); the Centers for Disease Control and Prevention in their studies, *Tobacco Use Among Middle and High School Students — United States, 2011–2015* (2016), and *Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997* (1998); and of the following scholars in these scientific journals: Chen, J., & Millar, W. J., *Age of smoking initiation: implications for quitting*. HEALTH REPORTS, 9(4), 39–46 (1998); D’Avanzo, B., La Vecchia, C., & Negri, E., *Age at Starting Smoking and Number of Cigarettes Smoked*, ANNALS OF EPIDEMIOLOGY, 4(6), 455–459 (1994); Everett, S. A., Warren, C. W., Sharp, D., Kann, L., Husten, C. G., & Crossett, L. S. *Initiation of Cigarette*

Smoking and Subsequent Smoking Behavior Among U.S. High School Students, PREVENTIVE MEDICINE, 29(5), 327–333 (1999); Giovino, G. A., Epidemiology of Tobacco Use in the United States, ONCOGENE, 21(48), 7326–7340 (2002); Khuder, S. A., Dayal, H. H., & Mutgi, A. B., *Age at Smoking Onset and its Effect on Smoking Cessation*. ADDICTIVE BEHAVIORS, 24(5), 673–677 (1999); Luke, D. A., Hammond, R. A., Combs, T., Sorg, A., Kasman, M., Mack-Crane, A., Henriksen, L., *Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density*, AMERICAN JOURNAL OF PUBLIC HEALTH, 107(5), 740–746 (2017); MINNESOTA DEPARTMENT OF HEALTH, DATA HIGHLIGHTS FROM THE 2017 MINNESOTA YOUTH TOBACCO SURVEY, SAINT PAUL, MN (2018); Tobacco Control Legal Consortium, *The Verdict Is In: Findings from United States v. Phillip Morris, The Hazards of Smoking*, University of California — San Francisco (2006); Truth Tobacco Industry Documents, <https://www.industrydocuments.library.ucsf.edu/tobacco/>; Xu, X., Bishop, E. E., Kennedy, S. M., Simpson, S. A., & Pechacek, T. F., *Annual Healthcare Spending Attributable to Cigarette Smoking: An Update*, AMERICAN JOURNAL OF PREVENTIVE MEDICINE, 48(3), 326–333 (2015), copies of which are adopted by reference.

Sec. 16-158. - Definitions.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. 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:

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.”

Cigar. Any roll of tobacco that is wrapped in tobacco leaf or in any other substance containing tobacco, with or without a tip or mouthpiece, which is not a cigarette as defined in Minn. Stat. § 297F.01, subd. 3, as may be amended from time to time.

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 article. Compliance checks 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 the City or other units of government for educational, research, and training purposes, or for investigating or enforcing Federal, State or local laws and regulations relating to licensed products.

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 product that has been approved or certified by the U.S. Food and Drug Administration for sale as a tobacco-cessation

product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.

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 percent 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.

Licensed Product: The term that collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

Loosies: Loosies means (1) single or individually packaged cigars or cigarettes offered for sale, regardless of whether they have been removed from their original retail packaging, and (2) any other licensed product that has been removed from its original retail packaging and offered for sale. Loosies does not include individual cigars with a retail price, after any discounts are applied and before any sales taxes are imposed, of at least \$3.00 per cigar.

Moveable Place of Business: Any form of business operated out of a kiosk, 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.

Nicotine or Lobelia Delivery Product: Any product containing or delivering nicotine or lobelia intended for human consumption, 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 product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration as a tobacco-cessation product, a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

Pharmacy. A place of business at which prescription drugs are prepared, compounded, or dispensed by or under the supervision of a pharmacist and from which related clinical pharmacy services are delivered.

Retail Establishment: Any place of business where licensed products are available for sale to the general public, including, but not be limited to, grocery stores, tobacco products shops, convenience stores, gasoline service stations, bars, 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 has access to the licensed products without the assistance or intervention of the licensee or the licensee's employee. Assistance or intervention means the actual physical exchange of the licensed product between the customer and the licensee or employee.

Smoking: Inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, 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. Any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product including but not limited to 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 sweepings of tobacco; and other kinds and forms of tobacco. Tobacco does not include any product that has been approved by the U.S. 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.

Tobacco-Related Device. Any rolling papers, wraps, pipes, or other device intentionally designed or intended to be used with tobacco products. Tobacco related device includes 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 that dispenses licensed products upon the insertion of money, tokens or other form of payment directly into the machine by the person seeking to purchase the licensed product.

Sec. 16-159. - License.

- (a) *License Required.* No person shall sell or offer to sell any licensed product 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 Clerk shall forward the application to the City Council for action at its next regularly scheduled City Council meeting. If the City Clerk determines that an application is incomplete, they shall return the application to the applicant with notice of the information necessary to make the application complete.

A business applicant, at the time of application, shall furnish the City with a list of all persons that have an interest of five percent or more in the business. The list shall name all

owners and show the interest held by each, either individually or beneficially for others. It is the duty of each business licensee to notify the City Clerk in writing of any change in ownership in the business. Any change in the ownership or control of the business shall be deemed equivalent to a transfer of the license, and any such license shall be revoked 30 days after any such change in ownership or control unless the licensee has notified the Council of the change in ownership by submitting a new license application for the new owners, and the Council has approved the transfer of the license by appropriate action. Any time an additional investigation is required because of a change in ownership or control of a business, the licensee shall pay an additional investigation fee to be determined by the City. The City may at any reasonable time examine the transfer records and minute books of any business licensee to verify and identify the owners, and the City may examine the business records of any other licensee to the extent necessary to disclose the interest which persons other than the licensee have in the licensed business. The Council may revoke any license issued upon its determination that a change of ownership of a licensee has actually resulted in the change of control of the licensed business so as materially to affect the integrity and character of its management and its operation, but no such action shall be taken until after a hearing by the Council on notice to the licensee.

- (c) *Action.* The City Council may either approve or deny the application for a 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 approves 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. If a license application is denied, the earliest an applicant may reapply is 12 months from the date the license is denied.
- (d) *Term.* All licenses issued under this article shall be valid for one calendar year from the date of issue.
- (e) *Revocation or Suspension.* Any license issued under this article may be revoked or suspended as provided in Section 16-168.
- (f) *Transfers.* All licenses issued under this article shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. The transfer of any license to another location or person is prohibited.
- (g) *Display.* All licenses shall be posted and displayed in plain view of the general public on the licensed premises.
- (h) *Renewals.* The renewal of a license issued under this article 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 article is a privilege and does not entitle the license holder to automatic renewal of the license.
- (j) *Maximum Number of Licenses.* The number of licenses issued under this section shall be capped at the number of licenses in place on January 1, 2020. Any decrease in the number of licenses that occurs after January 1, 2020 due to attrition will decrease the number of available licenses to that extent until the number of available licenses reaches 8. 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 existing licenses are not renewed or are revoked. A new applicant who has purchased a business location holding a valid license will be entitled to first priority, provided the new applicant meets all other application requirements in accordance with this ordinance.

Sec. 16-160. - Fees.

No license shall be issued under this article until the appropriate license fee shall be paid in full. The fee for a license under this article shall be established by the City Council and adopted in the City fee schedule, and may be amended from time to time.

Sec. 16-161. - Ineligibility and Basis for Denial of License.

(a) *Ineligibility.*

- (1) *Pharmacies.* No existing license will be eligible for renewal to any pharmacy, including any retail establishment that operates or contains an on-site pharmacy, and no pharmacy or any retail establishment that operates an on-site pharmacy will be granted a new license.
- (2) *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 article.

(b) *Grounds for Denial.* Grounds for denying the issuance or renewal of a license under this article include, but are not limited to, the following:

- (1) The applicant is under the age of 21 years.
- (2) The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation from holding a license.
- (3) 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.
- (4) The applicant has had a license to sell licensed products suspended or revoked during the 12 months preceding the date of application, or the applicant has or had an interest in another premises authorized to sell licensed products, whether in the City or in another jurisdiction, that has had a license to sell licensed products suspended or revoked during the same time period, provided the applicant had an interest in the premises at the time of the revocation or suspension, or at the time of the violation that led to the revocation or suspension.
- (5) The applicant is a business that does not have an operating officer or manager who is eligible pursuant to the provisions of this chapter.
- (6) The applicant is the spouse of a person ineligible for a license pursuant to the provision of Subsections (b)(2) and (3) of this section or who, in the judgement of the Council, is not the real party in interest or beneficial owner of the business to be operated, under the license.

- (7) The applicant fails to provide any information required on the application, or provides false or misleading information. Any false statement on an application, or any willful omission of any information called for on such application form, shall work an automatic refusal of license, or if already issued, shall render any license issued pursuant thereto void and of no effect to protect the applicant from prosecution for violation of this chapter, or any part thereof.
- (c) The City shall conduct a background investigation on all new applications and applications to transfer a license. The City may conduct a background and financial check on an application for a renewal of a license if it is in the public interest to do so. 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 article and the City shall provide the person with a notice of revocation, along with information on the right to appeal.
- (d) No license shall be granted or renewed for operation on any premises on which real estate taxes, assessments, or other financial claims of the City or of the State are due, delinquent, or unpaid. If an action has been commenced pursuant to the provisions of Minn. Stats. ch. 278, questioning the amount or validity of taxes, the Council may, on application by the licensee, waive strict compliance with this provision; no waiver may be granted, however, for taxes, or any portion thereof, which remain unpaid for a period exceeding one year after becoming due unless such one-year period is extended through no fault of the licensee.

Sec. 16-162. - Prohibited Acts.

(a) *In general.* No person shall sell or offer to sell any licensed product:

- (1) By means of any type of vending machine.
- (2) By means of self-service merchandising.
- (3) By means of loosies as defined in Section 16-158.
- (4) Containing opium, morphine, jimson weed, belladonna, 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.
- (5) That is 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.
- (6) 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.

(b) *Legal Age.* No person shall sell any licensed product to any person under the age of 21.

- (1) *Age verification.* Licensees shall verify by means of government issued photographic identification 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.

(2) *Signage*. Notice of the legal sales age and age verification requirement 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.

(c) *Flavored Products*. No person shall sell or offer for sale any flavored products.

(d) *Minimum Cigar Price*. No person shall sell or offer to sell any Cigar, sold individually or as a multi-unit package, and regardless of whether it is within its intended retail packaging, for a sales price, after any discounts are applied and before sales taxes are imposed, of less than \$3.00 per Cigar.

(e) *Smoking Prohibited*. Smoking, including smoking for the purpose of sampling of licensed products, is prohibited within the indoor area of any retail establishment licensed under this ordinance.

(f) *Samples Prohibited*. No person shall distribute samples of any licensed product free of charge or at a nominal cost.

Sec. 16-163. - Additional Requirements.

(a) *Storage*. All 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.

Sec. 16-164. - Responsibility.

All licensees are responsible for the actions of their employees in regard to the sale, offer to sell, and furnishing of licensed products on the licensed premises. The sale, offer to sell, or furnishing of any licensed product by an employee shall be considered an act of the licensee. Nothing in this section shall be construed as prohibiting the City from also subjecting the employee to any civil penalties that the City deems to be appropriate under this ordinance, state or federal law, or other applicable law or regulation.

Sec. 16-165. - Compliance Checks and Inspections.

All premises licensed under this subdivision shall be open to inspection by the City during regular business hours. From time to time, but at least once per year, the City shall conduct compliance checks. In accordance with state law, the City will conduct at least one compliance check that involves the participation of one person between the ages of 15 and 17 and may conduct an additional compliance check involving one person between the ages of 18 and 20.

No person used in compliance checks shall attempt to use a false identification misrepresenting their age. All persons lawfully engaged in a compliance check shall answer all questions about their age asked by the licensee or their employee, and produce any identification, if any exists, for which they are asked. Persons used for the purpose of compliance checks shall be

supervised by law enforcement or other designated personnel. Minors used for compliance checks shall not be guilty of unlawful possession licensed products when those items are obtained as a part of the compliance check. Nothing in this article 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.

Additionally, from time to time, the City will conduct inspections to determine compliance with any or all other aspects of this ordinance.

Sec. 16-166. - Other Prohibited Acts.

Unless otherwise provided, the following acts shall be a violation of this article:

- (a) *Illegal Procurement.* It shall be a violation of this article for any person 21 years of age or older to purchase, attempt to purchase, or otherwise obtain any licensed product on behalf of a person under the age of 21. It shall also be a violation for any person 21 years of age or 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 article for any person to use any form of false identification, whether the identification is that of another person or one that has been modified or tampered with to represent an age older than the actual age of the person using that identification.

Sec. 16-167. - Exceptions and Defenses.

Nothing in this article shall prevent the providing of tobacco or tobacco-related devices to any person as part of an indigenous practice or lawfully recognized religious, spiritual, or cultural ceremony or practice. It shall be an affirmative defense to the violation of this article for a person to have reasonably relied on proof of age as described by state law.

Sec. 16-168. - Violations and Penalty.

- (a) *Administrative Civil Penalties—Individuals.* If a person who is not a licensee is found to have violated this article, the person shall be charged an administrative penalty as follows:
 - (1) *First Violation.* The Council shall impose a civil fine not to exceed \$50.00.
 - (2) *Second Violation Within 12 months.* The Council shall impose a civil fine not to exceed \$100.00.
 - (3) *Third Violation Within 12 months.* The Council shall impose a civil fine not to exceed \$150.00.
- (b) *Same—Licensee.* If a licensee or an employee of a licensee is found to have violated this article, the licensee shall be charged an administrative penalty as follows:
 - (1) *First Violation.* The Council shall impose a civil fine of \$500.00 and suspend the license for not less than 1 day.
 - (2) *Second Violation Within 36 Months.* The Council shall impose a civil fine of \$1,000.00 and suspend the license for not less than 3 consecutive days.

(3) *Third Violation Within 36 Months.* The Council shall impose a civil fine of \$2,000.00 and suspend the license for not less than 10 consecutive days.

(4) *Fourth Violation Within 36 Months.* The Council shall revoke the license for at least one year.

(c) *Administrative Penalty Procedures.* Notwithstanding anything to the contrary in this section:

(1) Any of the administrative civil penalties set forth in this section that may be imposed by the Council, may in the alternative be imposed by an administrative citation under Section 1-9.

(2) If one of the foregoing penalties is imposed by an action of the Council, no penalty shall take effect until the licensee or person has received notice (served personally or by mail) of the alleged violation and of the opportunity for a hearing before the Council, and such notice must be in writing and must provide that a right to a hearing before the Council must be requested within 10 business days of receipt of the notice or such right shall terminate.

(d) *Misdemeanor Prosecution.* Nothing in this section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this article.

Sec. 16-169. - Severability.

If any section or provision of this ordinance is held invalid, such invalidity will not affect other sections or provisions that can be given force and effect without the invalidated section or provision.

Sec. 16-170 - Effective Date.

This ordinance becomes effective on January 1, 2020.

Section 3. City Code Chapter 1 entitled "General Provisions" and Sec. 1-8 entitled "General Penalty; Continuing Violations" are hereby adopted in their entirety, by reference, as though repeated verbatim herein.

Section 4. This ordinance shall take effect from and after January 1, 2020.

Adopted by the City Council this 15th day of October, 2019.

/s/Shepard M. Harris
Shepard M. Harris, Mayor

ATTEST:

/s/Kristine A. Luedke
Kristine A. Luedke, City Clerk

SUMMARY OF ORDINANCE NO. 670
AN ORDINANCE AMENDING THE CITY CODE
Repealing in its Entirety Article VI. Tobacco and Adding a New Article VI. Tobacco
Licensing and Regulations

This is a summary of the provisions of the above ordinance which has been approved for publication by the City Council.

This ordinance amends Repealing in its Entirety Article VI. Tobacco and Adding a New Article VI. Tobacco Licensing and Regulations. This Article provides for license requirements and regulations for tobacco and incorporates the following new polices:

- Prohibiting the sale of flavored tobacco, including menthol, at all retailers
- Prohibiting the sale of tobacco at pharmacies
- Prohibiting the sale of tobacco to people under 21
- Capping the amount of tobacco licenses issued by the City at 8
- Increasing the minimum price for certain tobacco products
- Prohibiting free samples
- Requiring liquid nicotine products to be sold in child proof packaging

This ordinance shall take effect upon publication. NOTICE: the foregoing is only a summary of the ordinance.

A copy of the full text of this ordinance is available for inspection during regular office hours at the office of the City Clerk.

Adopted by the City Council this 15th day of October, 2019.

/s/Shepard M. Harris
Shepard M. Harris, Mayor

ATTEST:

/s/Kristine A. Luedke
Kristine A. Luedke, City Clerk

3E. Accept Resignation from the Human Services Commission - continued

MOTION made by Council Member Clausen, seconded by Council Member Schmidgall to accept the resignation of Mr. Kapel from the Human Services Commission and the motion carried.

4. Public Hearing

5. Old Business

6. New Business

6A. Second Consideration – Ordinance #670 - Tobacco Licensing and Regulation Ordinance

City Clerk Luedke presented the staff report and answered questions from Council. City Attorney Cisneros answered questions for Council.

Mayor Harris stated that per the Council's agenda all ordinances listed under new business are eligible for public input. The following participants addressed the Council.

Dr. Otieno, 8400 Golden Valley Road, said he has lived in the City for many years and worked in the public health and dentistry area before his retirement. He said he had many patients with tobacco related illnesses. He said nicotine is highly addictive and that patients find it hard to quit even with a poor prognosis. He said that limiting tobacco products could keep people from starting to smoke. He said tobacco products should not be available in pharmacies because they provide life-saving medicines to people. He thanked the Council for letting him present tonight.

Ms. Gretchen Weinke, Golden Valley Liquor Barrel, 7890 Olson Memorial Highway, said over the past months, there has been one-sided negative opinions regarding tobacco issues because of the vamping epidemic media coverage. She said local retailers have been the punching bag for the issue. She said the local retailers were only given a short time to prepare for the public forum before they were thrashed by bias community members. She said only 2 percent of the community responded to the survey and read some of the comments, which were opposed to the ban. She said she has 15-30 customers a day buy menthol products and they will take their business to other cities. She said if the goal is to restrict the sale of youth tobacco use that T21 would do that and if it is to ban vaping products, the favor ban accomplishes that. She asked if menthol and wintergreen products could be excluded from the proposed favor ban.

Ms. Molly Moilanen, Vice President ClearWay Minnesota, said she is the co-chair of Minnesotans for a Smoke free generation, which is a coalition organization that works together to reduce nicotine addiction and tobacco use in kids. She said the Governor released the 2019 Minnesota Student survey data and it showed another jump in youth e-cig use. She said passing this strong packet would allow Golden Valley to address the tobacco industry strategy and aid with health improvements for the youth. She said it is important to keep menthol products in the ban because the tobacco industry targets people of color with menthol marketing. She said the coalition would continue to work at the State Capital to pass these policies and thanked the Council for considering this strong policy.

6A. Second Consideration – Ordinance #670 - Tobacco Licensing Ordinance - continued

There was Council discussion regarding the proposed Tobacco Licensing and Regulation Ordinance.

MOTION made by Council Member Fonnest, seconded by Council Member Clausen to adopt second consideration **Ordinance #670**, repealing in its Entirety Article VI. Tobacco and adding a New Article VI. Tobacco Licensing and Regulation. Upon a vote being taken the following voted in favor of: Clausen, Fonnest, Harris, Rosenquist and Schmidgall, the following voted against: none and the motion carried.

MOTION made by Council Member Clausen, seconded by Council Member Rosenquist to approve the Summary of **Ordinance #670** for Publication based on the finding that the title and summary clearly inform the public of the intent and elect of the ordinance and the motion carried.

6B. Golden Valley 4d Affordable Housing Program

Planning Intern Anderson presented the staff report and answered questions from Council. City Attorney Cisneros, Planning Manager Zimmerman and City Manager Cruikshank answered questions from Council.

Ms. Ruth Paradise, 8515 Duluth Street, asked if rents would be examined each year to make sure they fall within the guidelines. She also asked about if a property owner had a large amount of evictions would the City keep track of that.

Ms. Elizabeth Gross, 2230 Xylon Avenue, asked how many apartments would be enrolled in the program and how this would affect property taxes for residents in the City.

There was Council discussion regarding the 4d Affordable Housing Program.

MOTION made by Council Member Clausen, seconded by Council Member Schmidgall to adopt **Resolution 19-58**, establishing the Golden Valley 4d Affordable Housing Program and authorizing staff to make and execute Participation Agreements for enrolling eligible properties in the program. Upon a vote being taken the following voted in favor of: Clausen, Fonnest, Harris, Rosenquist and Schmidgall, the following voted against: none and the motion carried.

6C. First Consideration – Ordinance #671 - Gambling Ordinance Amendments

City Clerk Luedke presented the staff report and answered questions from Council.

MOTION made by Council Member Schmidgall, seconded by Council Member Rosenquist to adopt first consideration **Ordinance #671**, Amending Article XVI. GAMBLING by removing Section 16-434. Licensing and Investigation Fee and updating Section 16-436 Responsible Parties. Upon a vote being taken the following voted in favor of: Clausen, Fonnest, Harris, Rosenquist and Schmidgall, the following voted against: none and the motion carried.



MINNESOTA CITY RETAIL TOBACCO LICENSING ORDINANCE



Through licensing and related regulations, Minnesota cities have the opportunity to address the sale of commercial tobacco and related devices and products in the retail environment.

This model ordinance includes all of the minimum retail tobacco sales restrictions required by Minnesota state and federal law. It also includes a number of additional provisions a city may choose to adopt in order to further advance public health. A city planning to adopt this model ordinance, in whole or in part, should review it with its city attorney beforehand to determine suitability for the city's circumstances. While the model ordinance language can be modified by adding or omitting content concerning activities that a city does or does not seek to regulate, doing so may result in an ordinance that does not conform to state law, federal law, and best public health policy practices.

Because provisions within this model ordinance are controlled by statute and rule, the city



attorney should review any modifications to ensure they conform to state and federal law. In addition, because the ordinance establishes rights and responsibilities of both the city and license applicants and holders, the city attorney should review the entire ordinance before it is adopted. The Public Health Law Center provides legal technical assistance to help communities that wish to adopt commercial tobacco control ordinances. We encourage communities to contact us for assistance when considering this model language.

Notice

This ordinance is drafted in the form prescribed by state law for statutory cities. Statutory cities must publish their ordinances — or a summary thereof — in the city’s official newspaper before they become effective. Home rule charter cities may have to follow the formatting and/or other procedural requirements found in their city’s charter. Charter cities should consult their charter and their city attorney to ensure that they comply with all charter requirements. All cities must provide copies of their ordinances to the county law library or its designated depository pursuant to Minn. Stat. § 415.021.

This ordinance may affect existing license holders. Under Minn. Stat. § 461.19, a city is required to give retailers notice that it is considering adopting or substantially amending a retail tobacco licensing ordinance. The city must take reasonable steps to send notice by mail at least 30 days prior to the meeting to the last known address of each licensee or person required to hold a license. The notice must state the time, place, and date of the meeting and the subject matter of the proposed ordinance. A city may also mail a copy of the proposed ordinance to all existing license holders to inform them of its contents and to provide them an opportunity to make their views known.

Additionally, Minn. Stat. § 415.19 requires statutory and home rule charter cities to post proposed new ordinances and ordinance amendments on the city website at least 10 days prior to a final vote by the city council, if the city already posts ordinances on its site. Under the same statute, within 10 days of a final vote, cities must also provide this same notice to all city listserv subscribers via their electronic notification system or, if the city does not have an electronic notification system, in the location that the city posts public notices. Cities must also provide new or renewing licensees with information about the city’s notification procedure at the time of application.

Tips for Using This Model Ordinance

The best possible world is one without the death and health harms associated with commercial tobacco use. Communities differ on their readiness and willingness to adopt certain commercial tobacco control policies that are intended to help make that world a reality. As such, this model ordinance represents a balance between state and federal minimum standards, best public health policy practices, and practicality for city governments in Minnesota. This model ordinance contains several policy components that go beyond state minimum requirements and communities may or may not choose to adopt at this time, including:

- Raising the legal purchasing age to 21;
- Restricting the sale of flavored tobacco products, including menthol;



- Regulating the price of commercial tobacco products, such as establishing minimum prices for cigars and restricting price promotions and coupon redemptions;
- Regulating the distance between tobacco retailers, youth-oriented facilities and other retailers; and
- Prohibiting pharmacies from selling commercial tobacco products.

Context Box

Context boxes are included throughout this model ordinance to explain some key provisions. These boxes are not meant to be included in any final ordinance. A city wishing to adopt all or part of this model ordinance should keep this in mind and remove the context boxes.

Context boxes have been included throughout the model ordinance to explain some of the key provisions. These boxes are not meant to be included in any final ordinance and a city wishing to adopt all or part of this model ordinance should keep this in mind and remove the context boxes.

While the Public Health Law Center does not lobby, advocate, or directly represent communities, adopting effective commercial tobacco control policies starts early with education, stakeholder and community engagement, and a strong advocacy plan. If a community is unaware of the resources available to them for engaging the community and developing an advocacy plan, or if a city is considering adopting an ordinance and is interested in learning about the range of resources available, the Public Health Law Center can provide assistance through our publications and referrals to experts in the field. In certain, limited circumstances, Public Health Law Center staff may be able to speak at public hearings or work sessions to provide education about particular policy options.

This retail tobacco licensing ordinance was prepared by the Tobacco Control Legal Consortium at the Public Health Law Center, located at Mitchell Hamline School of Law in St. Paul, Minnesota.

The Public Health Law Center provides information and legal technical assistance on issues related to public health. The Center does not lobby nor does it provide direct legal representation or advice. This document should not be considered legal advice.

This publication represents the only Minnesota model city retailer licensing policy endorsed by the Public Health Law Center.



ORDINANCE NO. [_____]

**AN ORDINANCE REGULATING THE SALE OF TOBACCO
AND RELATED DEVICES AND PRODUCTS WITHIN
THE CITY OF [_____], MINNESOTA**

**THE CITY COUNCIL OF THE CITY OF [_____]
DOES ORDAIN:**

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Section 1. Purpose and Intent.

Because the city recognizes that the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 18 violates both state and federal laws; and because studies, which the city accepts and adopts, have shown that youth use of any commercial tobacco product has increased to 26.4% in Minnesota; and because nearly 90% of 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 alcohol 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 studies show that youth and young adults are especially susceptible to commercial tobacco product availability, advertising, and price promotions at tobacco retail environments; and because commercial tobacco use has been shown to be the cause of many serious health problems which subsequently place a financial burden on all levels of government, this ordinance is intended to regulate the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect youth and young adults against the serious health effects associated with use and initiation, and to further the official public policy of the state to prevent young people from starting to smoke, as stated in Minn. Stat. § 144.391, as it may be amended from time to time.

In making these findings, the City Council accepts the conclusions and recommendations of: the U.S. Surgeon General reports, *E-cigarette Use Among Youth and Young Adults* (2016), *The Health Consequences of Smoking — 50 Years of Progress* (2014) and *Preventing Tobacco Use Among Youth and Young Adults* (2012); the Centers for Disease Control and Prevention in their studies, *Tobacco Use Among Middle and High School Students — United States, 2011–2015* (2016), and *Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997* (1998); and of the following scholars in these scientific journals: Chen, J., & Millar, W. J. (1998). Age of smoking initiation: implications for quitting. *Health Reports*, 9(4), 39-46; D'Avanzo, B., La Vecchia, C., & Negri, E. (1994). Age at starting smoking and number of cigarettes smoked. *Annals of Epidemiology*, 4(6), 455-459; Everett, S. A., Warren, C. W., Sharp, D., Kann, L., Husten, C. G., & Crosssett, L. S. (1999). Initiation of cigarette smoking and subsequent smoking behavior among U.S. high school students. *Preventive Medicine*, 29(5), 327-333; Giovino, G. A. (2002). Epidemiology of tobacco use in the United States. *Oncogene*, 21(48), 7326-7340; Khuder, S. A., Dayal, H. H., & Mutgi, A. B. (1999). Age at smoking onset and its effect on smoking cessation. *Addictive Behaviors*, 24(5), 673-677; Luke, D. A., Hammond, R. A., Combs, T., Sorg, A., Kasman, M., Mack-Crane, A., Henriksen, L. (2017). Tobacco Town: Computational Modeling of Policy

Options to Reduce Tobacco Retailer Density. *American Journal of Public Health*, 107(5), 740–746; Minnesota Department of Health. (2018). *Data Highlights from the 2017 Minnesota Youth Tobacco Survey*. Saint Paul, MN; Tobacco Control Legal Consortium. (2006). *The Verdict Is In: Findings from United States v. Phillip Morris, The Hazards of Smoking*. University of California — San Francisco. Truth Tobacco Industry Documents, <https://www.industrydocumentslibrary.ucsf.edu/tobacco/>; Xu, X., Bishop, E. E., Kennedy, S. M., Simpson, S. A., & Pechacek, T. F. (2015) Annual healthcare spending attributable to cigarette smoking: an update. *American Journal of Preventive Medicine*, 48(3), 326–333, copies of which are adopted by reference.

Purpose and Findings

A Purpose and Findings section is important because it provides the evidentiary basis for the proposed commercial tobacco control policies and demonstrates the city’s reasoning for adopting specific provisions. This Purpose and Findings section reflects language appropriate for all of the provisions suggested. The Public Health Law Center can provide support for communities to determine which Purpose and Findings statements and references should be retained in a final ordinance, depending on which provisions from the model ordinance the city chooses to adopt.

Section 2. Definitions.

Except as may otherwise be provided or clearly implied by context, all terms are given their commonly accepted definitions. For the purpose of this ordinance, the following definitions 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.

CIGAR. Any roll of tobacco that is wrapped in tobacco leaf or in any other substance containing tobacco, with or without a tip or mouthpiece, which is not a cigarette as defined in Minn. Stat. § 297F.01, subd. 3, as may be amended from time to time.

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 ordinance. COMPLIANCE CHECKS 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 the city or



other units of government for educational, research, and training purposes or for investigating or enforcing federal, state, or local laws and regulations relating to licensed products.

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 product that has been approved or certified by the U.S. Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.

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.

IMITATION TOBACCO PRODUCT. Any edible non-tobacco product designed to resemble a tobacco product, or any non-edible tobacco product designed to resemble a tobacco product and intended to be used by children as a toy. IMITATION TOBACCO PRODUCT includes, but is not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling chewing tobacco, and shredded beef jerky in containers resembling tobacco snuff tins. IMITATION TOBACCO PRODUCT does not include electronic delivery devices or nicotine or lobelia delivery products.

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 percent 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. A standard window screen (0.011 gauge with an 18 by 16 mesh count) is not considered a wall.

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



LOOSIES. The common term used to refer to single or individually packaged cigars or cigarettes, or any other licensed product that has been removed from its intended retail packaging and offered for sale. LOOSIES does not include individual cigars with a retail price, after any discounts are applied and before any sales taxes are imposed, of at least [\$4.00] per cigar.

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 not a fixed address store front or other permanent type of structure authorized for sales transactions.

NICOTINE OR LOBELIA DELIVERY PRODUCT. Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not a tobacco or an electronic delivery device as defined in this section. NICOTINE OR LOBELIA DELIVERY PRODUCT does not include any product that has been approved or otherwise certified for legal sale by the U.S. Food and Drug Administration as a tobacco-cessation product, a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

PHARMACY. A place of business at which prescription drugs are prepared, compounded, or dispensed by or under the supervision of a pharmacist and from which related clinical pharmacy services are delivered.

RETAIL ESTABLISHMENT. Any place of business where licensed products are available for sale to the general public. The phrase includes but is not limited to grocery stores, tobacco products shops, convenience stores, gasoline service stations, bars, and restaurants.

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

SELF-SERVICE DISPLAY. The open display of licensed products in any manner where any person has access to the licensed products without the assistance or intervention of the licensee or the licensee's employee.

SMOKING. Inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, 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. Any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product including but not limited to 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 sweepings of tobacco; and other kinds and forms of tobacco. TOBACCO does not include any product that has been approved by the U.S. 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.

TOBACCO-RELATED DEVICE. Any rolling papers, wraps, pipes, or other device intentionally designed or intended to be used with tobacco products. TOBACCO-RELATED DEVICE includes 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 that dispenses licensed products upon the insertion of money, tokens, or other form of payment directly into the machine 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.

Section 3. License.

- (A) **License required.** No person shall sell or offer to sell any licensed product without first having obtained a license to do so from the city.
- (B) **Application.** An application for a license to sell licensed products must be made on a form provided by the city. The application must 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 will forward the application to the City Council for action at its next regularly scheduled meeting. If the City Clerk determines that an application is incomplete, it will be returned to the applicant with notice of the information necessary to make the application complete.
- (C) **Action.** The City Council may approve or deny the application for a license, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary. If the City Council approves the application, the City Clerk will issue the license to the applicant. If the City Council denies the application, notice of the denial will be given to the applicant along with notice of the applicant's right to appeal the decision.
- (D) **Term.** All licenses issued are valid for one calendar year from the date of issue.

- (E) **Revocation or suspension.** Any license issued may be suspended or revoked following the procedures set forth in Section 11.
- (F) **Transfers.** All licenses issued are valid only on the premises for which the license was issued and only for the person to whom the license was issued. The transfer of any license to another location or person is prohibited.
- (G) **Moveable place of business.** No license will be issued to a moveable place of business. Only fixed-location businesses are eligible to be licensed.
- (H) **Display.** All licenses must be posted and displayed at all times in plain view of the general public on the licensed premises.
- (I) **Renewals.** The renewal of a license issued under this ordinance will be handled in the same manner as the original application. The request for a renewal must 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 is a privilege and does not entitle the license holder to an automatic renewal of the license.
- (K) **Minimum clerk age.** Individuals employed by a licensed retail establishment under this ordinance must be at least [18 or 21] years of age to sell licensed products.

Minimum Age for Clerks

Cities may be interested in establishing a minimum age for employees that work for licensed tobacco retailers. Doing so ensures that employees are of or above the minimum legal sales age for commercial tobacco sales. If a city chooses to raise the minimum legal sales age to 21, but leave the minimum clerk age at 18, clerks between the ages of 18 and 20 can legally sell licensed products within the purview of their employment, but would be unable to purchase them.

- (L) **Maximum number of licenses.** The maximum number of licenses issued by the city at any time is limited to [see context box below]. 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.



Licensing Cap

Communities with a higher density of commercial tobacco retailers expose more youth and young adults to commercial tobacco industry marketing and make it easier for youth and young adults to obtain licensed products. This encourages commercial tobacco initiation, use, and brand choice. One way to address retailer density issues is to place a cap on the number of tobacco retailer licenses that may be issued by the city. The above provision would set the maximum number of licenses available.

Cities can choose how to structure a licensing cap to meet the needs of their communities. Potential options include setting the cap at the number of existing licensed retailers or limiting the number of licensed retailers based on population density. A city may also want to limit licenses to those that currently exist and reduce the number of available licenses over time, as licenses are revoked or expire and are not renewed. Cities are encouraged to work with local public health departments, city attorneys, and the Public Health Law Center to determine the appropriate licensing cap provision for their community.

For more information on retailer density, review our publication, *Location, Location, Location: Regulating Tobacco Retailer Locations for Public Health*.

- (M) **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.
- (N) **Proximity to other licensed retailers.** No license will be granted to any person for a retail establishment location that is within [2,000] feet of any other existing licensed retail establishment , as measured by the shortest line from the property line of the space to be occupied by the applicant for a license to the nearest property line of the existing licensee. This restriction does not apply to an applicant who has been licensed to sell licensed products in the same location for at least one year before the date this section was enacted into law.



Proximity Restrictions

Research has demonstrated that policies requiring set distances between retailers and between retailers and youth-oriented facilities help to reduce tobacco retailer density and increase prices for commercial tobacco products. These proximity buffers have the largest impact in urban, low-income neighborhoods, which have been historically targeted by the tobacco industry with pervasive marketing and price promotions at the point-of-sale. The greatest public health impacts are seen when these policies are combined with a cap on the number of licenses issued.

Luke, D. A., Hammond, R. A., Combs, T., Sorg, A., Kasman, M., Mack-Crane, A., Henriksen, L. (2017). Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density. *American Journal of Public Health*, 107(5), 740-746; Myers, A. E., Hall, M. G., Isgett, L. F., & Ribisl, K. M. (2015). A Comparison of Three Policy Approaches for Tobacco Retailer Reduction. *Preventive Medicine*, 74, 67-7; and Ribisl, K. M., Luke, D. A., Bohannon, D. L., Sorg, A. A., & Moreland-Russell, S. (2017). Reducing Disparities in Tobacco Retailer Density by Banning Tobacco Product Sales near Schools. *Nicotine & Tobacco Research: Official Journal of the Society for Research on Nicotine and Tobacco*, 19(2), 239-244.

- (O) **Pharmacies ineligible for licensure.** No existing license will be eligible for renewal to any pharmacy, including any retail establishment that operates or contains an on-site pharmacy, and no pharmacy or any retail establishment that operates an on-site pharmacy will be granted a new license.

Pharmacy Prohibitions

Several communities have adopted laws prohibiting pharmacies from selling commercial tobacco products. These laws have been shown to significantly reduce commercial tobacco retailer density when compared to communities without similar laws. These gains have had the greatest impact on neighborhoods with higher median income, education, and proportion of non-Hispanic white residents. Although pharmacy restrictions alone are unlikely to address health disparities, some studies have shown that these policies are most effective when combined with proximity restrictions.

Giovenco, D. P., Spillane, T. E., Mauro, C. M., & Hernández, D. (2018). Evaluating the Impact and Equity of a Tobacco-free Pharmacy Law on Retailer Density in New York City Neighbourhoods. *Tobacco Control*, tobaccocontrol-2018-054463. Jin, Y., Lu, B., Klein, E. G., Berman, M., Foraker, R. E., & Ferketich, A. K. (2016). Tobacco-Free Pharmacy Laws and Trends in Tobacco Retailer Density in California and Massachusetts. *American Journal of Public Health*, 106(4), 679-685.



- (P) **Smoking prohibited.** Smoking, including smoking for the purpose of the sampling of licensed products, is prohibited within the indoor area of any retail establishment licensed under this ordinance.
- (Q) **Samples prohibited.** No person shall distribute samples of any licensed product free of charge or at a nominal cost.
- (R) **Instructional program.** Licensees must ensure that all employees complete a training program on the legal requirements related to the sale of licensed products and the possible consequences of license violations. Any training program must be pre-approved by the city. Licensees must maintain documentation demonstrating their compliance and must provide this documentation to the city at the time of renewal, or whenever requested to do so during the license term.

Section 4. Fees.

No license will be issued under this ordinance until the appropriate license fees are paid in full. The fees will be established by the city's fee schedule and may be amended from time to time.

Licensing Fees

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 publication, *Retail License Fees*, provides more information about retail licensing fees and a license fee checklist.

Section 5. Basis for Denial of License.

- (A) Grounds for denying the issuance or renewal of a license include, but are not limited to, the following:
 - (1) The applicant is under 21 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 licensed products.
 - (3) The applicant has had a license to sell licensed products suspended or revoked within the preceding 12 months of the date of application.



- (4) The applicant fails to provide any of the information required on the licensing 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) Except as may otherwise be provided by law, the existence of any particular ground for denial does not compel the city to deny the license.
- (C) If a license is mistakenly issued or renewed to a person, it will be revoked upon the discovery that the person was ineligible for the license under this ordinance. The city will provide the license holder with notice of the revocation, along with information on the right to appeal.

Section 6. Prohibited Acts.

- (A) **In general.** No person shall sell or offer to sell any licensed product:
 - (1) By means of any type of vending machine.
 - (2) By means of loosies as defined.
 - (3) 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 products subject to this ordinance.
 - (4) 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.
- (B) **Legal age.** No person shall sell any licensed product to any person under the age of 21.
 - (1) **Age verification.** Licensees must verify by means of government-issued photographic identification 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.
 - (2) **Signage.** Notice of the legal sales age and age verification requirement 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.

Raising the Minimum Legal Sales Age (MLSA) to 21

In 2015, the Institute of Medicine (now the Health and Medicine Division of the National Academies of Sciences, Engineering, and Medicine) (IOM) released a report containing compelling evidence of the significant public health benefits of raising the minimum legal sales age (MLSA) for tobacco products. The IOM concluded that raising the MLSA today to 21 would result in a 12 percent decrease in tobacco use, approximately 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost for those born between 2000 and 2019. Based on studies showing the effectiveness of enforced youth access laws, increasing the MLSA is likely to be particularly effective in reducing tobacco usage among high school-aged youth by reducing their access to commercial tobacco products. Studies have also indicated that older underage youth (i.e. those who are closer to age 18) are more likely to succeed in buying tobacco in stores. Further, high school friends and peers of legal age are an important social source of commercial tobacco products for underage youth.

Under Minnesota state law, it is unlawful to sell licensed products to any person under the age of 18. [Minn. Stat. § 609.685](#), [Minn. Stat. § 609.6855](#). State law does not prohibit local jurisdictions from enacting a higher minimum legal sales age.

DiFranza, J R, Savageau, J. A., & Aisquith, B. F. (1996). Youth access to tobacco: the effects of age, gender, vending machine locks, and "it's the law" programs. *American Journal of Public Health*, 86(2), 221-224. DiFranza, Joseph R., & Coleman, M. (2001). Sources of tobacco for youths in communities with strong enforcement of youth access laws. *Tobacco Control*, 10(4), 323-328. DiFranza, Joseph R., Savageau, J. A., & Fletcher, K. E. (2009). Enforcement of underage sales laws as a predictor of daily smoking among adolescents — a national study. *BMC Public Health*, 9(1), 107. Institute of Medicine. (2015). *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products: Health and Medicine Division*.

- (C) **Self-service sales.** No person shall allow the sale of licensed products by any self-service displays where the customer may have access to those items without having to request the item from the licensee or the licensee's employee and where there is not a physical exchange of the licensed product from the licensee or the licensee's employee to the customer. All licensed products must be stored behind the sales counter, in another 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 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) **Flavored products.** No person shall sell or offer for sale any flavored products. This prohibition does not apply to retail establishments that:



- (1) Prohibit persons under 21 from entering at all times;
- (2) Derive at least 90 percent of their gross revenues from the sale of licensed products; and
- (3) Meet all of the following building or structural criteria:
 - (a) Shares no wall with, and has no part of their structure adjoined to any other business or retailer, unless the wall is permanent, completely opaque, and without doors, windows, and pass-throughs to the other business or retailer;
 - (b) Shares no walls with, and has no part of their structure directly adjoined to, another licensed tobacco retailer; and
 - (c) Is accessible by the public only by an exterior door.

Any retail establishment that sells flavored products must provide financial records documenting its annual sales, upon request by the city.

Sales of Flavored Products

Research demonstrates that flavored tobacco products are especially attractive to youth. These products increase initiation among all populations by masking the harsh taste of tobacco and nicotine. Flavors like menthol and clove also provide a numbing effect that lead to longer breath-holding. This makes quitting flavored tobacco products difficult. Overwhelmingly, youth begin using tobacco with flavored products. Restricting the sale of flavored tobacco products to stores that youth and young adults cannot enter can reduce youth access to, and advertisements for, flavored products.

Many Minnesota jurisdictions have restricted the sale of flavored tobacco products by using the exemptions above. In response, some tobacco retailers have divided their establishment into two stores, separated by a wall or other structural divider. This results in a 21 year+ licensed tobacco retailer on one side that sells flavored tobacco products and a licensed tobacco retailer on the other side that sells only unflavored tobacco products. Adding structural requirements, as suggested in this model ordinance, would place limitations upon such practices.

For more information, please review our publication: [*Regulating Flavored Tobacco Products*](#).



- (E) **Cigars.** No person shall sell or offer to sell any cigar that is not within its intended retail packaging containing a minimum of [five] cigars and for a sales price, after any discounts are applied and before sales taxes are imposed, of less than [\$12.50] per package. This provision does not prohibit the sale of a single cigar with a sales price, after any discounts are applied and before sales taxes are imposed, of at least [\$4.00].
- (F) **Imitation tobacco products.** No person shall sell, offer to sell, or otherwise distribute any imitation tobacco products within the city.
- (G) **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.
- (H) **Price promotion and coupon redemption.** No person shall accept or redeem any coupon or other instrument or mechanism, whether in paper, digital, electronic, mobile, or any other form, that provides any licensed products to a consumer at no cost or at a price that is less than the non-discounted, standard price listed by a retailer on the item or on any related shelving, posting, advertising, or display at the location where the item is sold or offered for sale, including all applicable taxes.

Product Discounts

The price of tobacco products directly affects the consumption levels, particularly among price-sensitive consumers, including youth, young adults, and those with limited financial means. The commercial tobacco industry uses innovative pricing strategies to entice new customers to purchase their products, to discourage current users from quitting, and to reduce the effectiveness of tobacco tax increases in decreasing tobacco sales and increasing users' quit attempts. These pricing strategies include "buy-one-get-one" coupons, cents- or dollar-off promotions, and multi-pack offers, which are often marketed and redeemed at the point-of-sale. Jurisdictions can prohibit the redemption of these price discounts to negate the sophisticated discounting strategies of the commercial tobacco industry. Please see our publication, *Death on a Discount: Regulating Tobacco Product Pricing*, for more information on product pricing.



Section 7. Responsibility.

All licensees are responsible for the actions of their employees in regard to the sale, offer to sell, and furnishing of licensed products on the licensed premises. The sale, offer to sell, or furnishing of any licensed product by an employee shall be considered an act of the licensee. Nothing in this section shall be construed as prohibiting the city from also subjecting the employee to any civil penalties that the city deems to be appropriate under this ordinance, state or federal law, or other applicable law or regulation.

Section 8. Compliance Checks and Inspections.

All licensed premises must be open to inspection by law enforcement or other authorized city officials during regular business hours. From time to time, but at least [twice] per year, the city will conduct compliance checks. In accordance with state law, the city will conduct [at least one compliance check that involves the participation of two persons: one person between the ages of 15 and 17 and one person between the ages of 18 and 20] [at least one compliance check that involves the participation of a person between the ages of 15 and 17 and at least one compliance check that involves the participation of a person between the ages of 18 and 20] to enter licensed premises to attempt to purchase licensed products. Prior written consent 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.

Compliance Checks

State law requires every local licensing authority to conduct at least one compliance check each year. This state-mandated compliance check “must involve minors over the age of 15, but under the age of 18.” It appears that cities with T21 laws can conduct this annual compliance check to both satisfy state law and to enforce its local T21 policy. To do so, a municipality could either conduct at least one compliance check with a person between the ages of 15 and 17 *and* a person between the ages of 18 and 20, *or* conduct more than one compliance check — at least one check with a person between the ages of 15 and 17 and at least one additional check with a person between the ages of 18 and 20. Above, the bracketed language identifies two options that the city could choose and only one option should be retained in a final licensing ordinance.



Section 9. Other Prohibited Acts.

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

- (A) **Prohibited furnishing or procurement.** It is a violation of this ordinance 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 illegally purchase or attempt to purchase any licensed product.
- (B) **Use of false identification.** It is a violation of this ordinance for any person to use any form of false identification, whether the identification is that of another person or has been modified or tampered with to represent an age older than the actual age of the person using that identification.

Penalizing Underage Purchase, Use, and Possession and the Use of a False Identification

Prohibiting the attempted and actual possession, use, and purchase (PUP) of licensed products by underage persons or the use of a false ID to purchase tobacco products is a part of many local Minnesota ordinances. However, this model ordinance 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. A *2017 Minnesota Annual Synar Report* on youth access enforcement found that underage persons were cited 3.6 times, and assessed fines 2.6 times, more often than retailers. It is important to note that, even if PUP provisions are not included in an ordinance, retailers have the authority to ask underage persons to leave the premises if they attempt to purchase products.

There is no strong evidence to support an assertion that PUP penalties are effective in significantly reducing youth smoking. Historically, these laws were lobbied for by the commercial tobacco industry to punish youth users while the industry simultaneously targeted, and continues to target, youth to replace a dying consumer base and maintain profits in a dwindling market.



Penalizing Underage Purchase, Use, and Possession and the Use of a False Identification *(continued)*

Furthermore, many advocates are concerned that PUP penalties open the door to selective enforcement against youth from certain racial, ethnic, and socio-economic groups. Evidence suggests that youth of color in Minnesota are disproportionately over-represented in similar status-level offenses, increasing their interactions with law enforcement and resulting in their introduction to the criminal justice system. Finally, Minnesota law currently penalizes PUP and the use of false IDs and no further enforcement is needed at the local level.

Some of these concerns may be alleviated by offering alternative non-criminal, non-monetary penalties as suggested below in section 11(B)(3).

For further reading on the history of PUP laws and the disproportionate enforcement of laws against youth of color and indigenous youth, please see Minnesota Juvenile Justice Advisory Committee's report, *2016 Annual Report to Governor Mark Dayton and the Minnesota State Legislature* (2016) and Wakefield, M., & Giovino, G. (2003). Teen penalties for tobacco possession, use, and purchase: evidence and issues. *Tobacco Control*, 12(suppl 1), i6-i13.

Section 10. Exceptions and Defenses.

- (A) **Religious, Spiritual, or Cultural Ceremonies or Practices.** Nothing in this ordinance prevents the provision of tobacco or tobacco-related devices to any person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.
- (B) **Reasonable Reliance.** It is an affirmative defense to a violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

Section 11. Violations and Penalties.

(A) Violations.

- (1) **Notice.** A person violating this ordinance may be issued, either personally or by mail, a citation from the city that sets forth the alleged violation and that informs the alleged violator of his or her right to a hearing on the matter and how and where a hearing may be requested, including a contact address and phone number.



(2) **Hearings.**

- (a) Upon issuance of a citation, a person accused of violating this ordinance may request in writing a hearing on the matter. Hearing requests must be made within 10 business days of the issuance of the citation and delivered to the City Clerk or other designated city officer. Failure to properly request a hearing within 10 business days of the issuance of the citation will terminate the person's right to a hearing.
 - (b) The City Clerk or other designated city officer will set the time and place for the hearing. Written notice of the hearing time and place will be mailed or delivered to the accused violator at least 10 business days prior to the hearing.
- (3) **Hearing Officer.** The City Council will designate a hearing officer. The hearing officer will be an impartial employee of the city or an impartial person retained by the city to conduct the hearing.
- (4) **Decision.** A decision will be issued by the hearing officer within 10 business days of the hearing. If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed, will be recorded in writing, a copy of which will be provided to the city and the accused violator by in-person delivery or mail as soon as practicable. If the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings will be recorded and a copy will be provided to the city and the acquitted accused violator by in-person delivery or mail as soon as practicable. The decision of the hearing officer is final, subject to an appeal as described in section 11, division (A)(6) of this section.
- (5) **Costs.** If the citation is upheld by the hearing officer, the city's actual expenses in holding the hearing up to a maximum of [\$1,000] must be paid by the person requesting the hearing.
- (6) **Appeals.** Appeals of any decision made by the hearing officer must be filed in [_____] County district court within 10 business days of the date of the decision.
- (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 ordinance, or whose employee violated this ordinance, will be charged an administrative fine of [\$200] for a first violation; [\$500] for a second offense at the same licensed premises within a 24-month period; and [\$750] for a third or subsequent offense at the same location within a 24-month period. Upon the third violation, the license will be suspended for a period of not less than [30] consecutive days. Upon a fourth violation, the license will be revoked.
- (2) **Other individuals.** Individuals, other than persons under the age of 21 regulated by division (B)(3) of this section, who are found to be in violation of this ordinance will be charged an administrative fine 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 such as tobacco-related education classes, diversion programs, community services, or another penalty that the city determines to be appropriate. The City Council will consult with court personnel, educators, parents, children and other interested parties to determine an appropriate penalty for persons under the age of 21 in the city. The penalty may be established by ordinance and amended from time to time.
- (4) **Statutory penalties.** If the administrative penalty authorized to be imposed by Minn. Stat. § 461.12, as it may be amended from time to time, differ from that established in this section, then the higher penalty will prevail.

- (C) **Misdemeanor prosecution.** Nothing in this section prohibits the city from seeking prosecution as a misdemeanor for any alleged violation of this ordinance by a person 21 years of age or older.

Section 12. Severability.

If any section or provision of this ordinance is held invalid, such invalidity will not affect other sections or provisions that can be given force and effect without the invalidated section or provision.

Section 13. Effective Date.

This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.

TOBACCO SALES

Scenario C

* Existing Tobacco License

Sale Restrictions

-  Assembly - 500 ft buffer
-  Parks and Natural Areas - 500 ft buffer
-  No Sale Property Buffer

Commercial and Mixed Use (129)

-  Sales Allowed - Full Property (67)
-  Sales Allowed - Partial Property (41)
-  Sales Disallowed - Partial Property (41)
-  Sales Disallowed - Full Property (21)



TOBACCO SALES

Scenario D

* Existing Tobacco License

Sale Restrictions

-  Assembly - 500 ft buffer
-  Parks and Natural Areas - 500 ft buffer
-  No Sale Property Buffer

Commercial (63)

-  Sales Allowed - Full Property (25)
-  Sales Allowed - Partial Property (22)
-  Sales Disallowed - Partial Property (22)
-  Sales Disallowed - Full Property (16)



TOBACCO SALES

Scenario E

* Existing Tobacco License

Sale Restrictions

 Assembly - 750 ft buffer

 No Sale Property Buffer

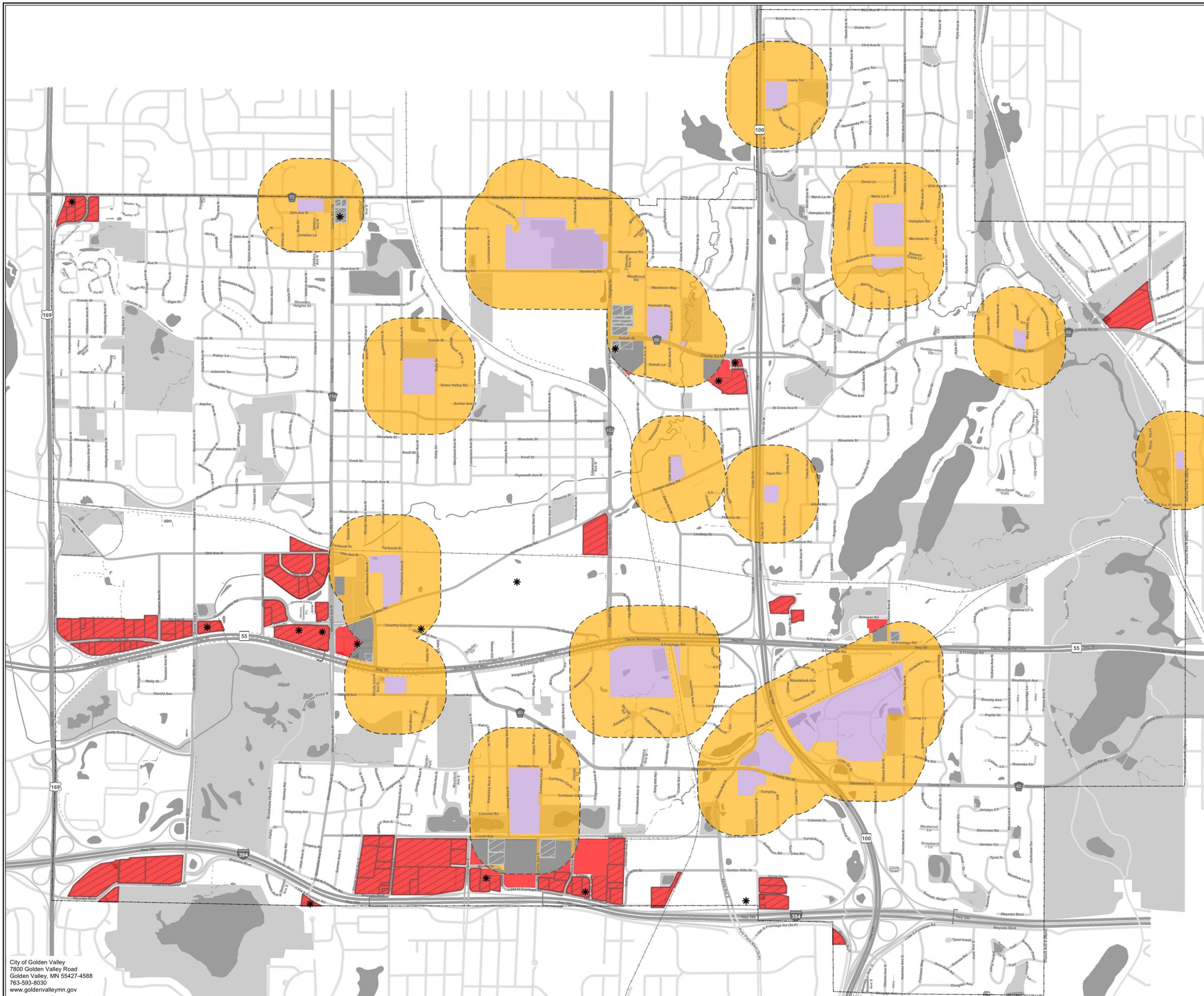
Commercial and Mixed Use (129)

 Sales Allowed - Full Property (94)

 Sales Allowed - Partial Property (19)

 Sales Disallowed - Partial Property (19)

 Sales Disallowed - Full Property (16)



TOBACCO SALES

Scenario F

* Existing Tobacco License

Sale Restrictions

Assembly - 750 ft buffer

No Sale Property Buffer

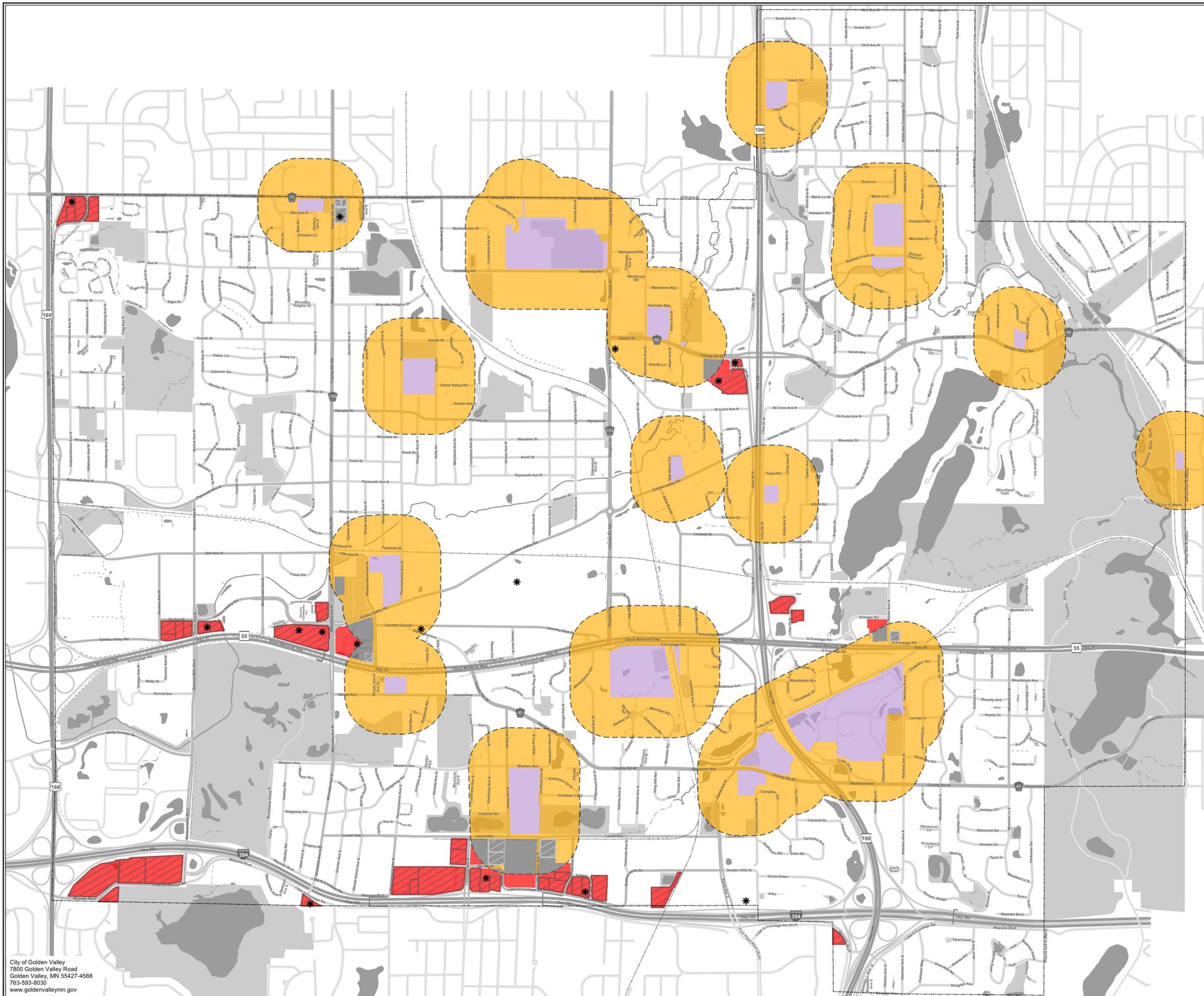
Commercial (63)

Sales Allowed - Full Property (42)

Sales Allowed - Partial Property (13)

Sales Disallowed - Partial Property (13)

Sales Disallowed - Full Property (8)



TOBACCO SALES

Scenario G

* Existing Tobacco License

Allowed Sales

Commercial

Mixed Use

Sale Restriction

Distance from other Retailer

500 ft

1000 ft

1500 ft

