

**City of Gem Lake, Ramsey County, Minnesota  
Tobacco and Nicotine Regulation  
Ordinance No. 68**

**AN ORDINANCE REGULATING THE SALE, DISTRIBUTION, POSSESSION, AND USE OF TOBACCO; TOBACCO-RELATED AND ELECTRONIC DELIVERY DEVICES; AND NICOTINE AND LOBELIA PRODUCTS IN THE CITY OF GEM LAKE AND TO PROVIDE PENALTIES FOR VIOLATIONS AND TO REDUCE THE ILLEGAL SALE, DISTRIBUTION, POSSESSION, AND USE OF SUCH ITEMS TO AND BY PERSONS UNDER THE AGE OF 21 YEARS.**

**The City Council of the City of Gem Lake hereby ordains:**

**Section 1.**

1. **Authority.** This Ordinance is adopted pursuant to authority granted in the United States FDA Tobacco Regulations of 1996 and Minnesota Statutes along with amendments which, from time to time, may be made thereto.
2. **Purpose and Intent.**
  1. **Purpose.** The purpose of this Ordinance is to recognize that the sale, distribution, possession, and use of tobacco; tobacco-related and electronic delivery devices; and nicotine and lobelia products to persons under the age of twenty-one (21) years is in violation of the laws of the State of Minnesota and the United States, and to protect and promote the health, safety, and general welfare of the both the general public and minors by recognizing that smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government.
  2. **Intent.** The intent of this Ordinance is to accomplish the purpose through regulation of the sale, distribution, possession, and use tobacco; tobacco-related and electronic delivery devices; and nicotine and lobelia products thus enforcing and furthering existing laws including, but not limited to, Minn Stat. § 461.
3. **Title.** This Ordinance shall be known as the "Tobacco and Nicotine Regulation Ordinance" of the City of Gem Lake.

**Section 2.**

1. **Interpretation.** In the interpretation and application of this Ordinance, its provisions shall be held to be minimum requirements and shall not be construed so as to fully effect its purpose and shall not be deemed a limitation or repeal of any other power established by law or Ordinance except as specifically provided herein. In the event that conflicting requirements are imposed by this Ordinance or by other Ordinances of the City of Gem Lake, the more restrictive provisions shall apply.
2. **Construction of Wording.** Words used in the present tense include the past and future tense; the singular includes the plural, and the plural includes the singular; the word "shall" is mandatory and the word "may" is permissive; the masculine gender includes the feminine.
3. **Definitions.** Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The following terms shall have definitions given to them:
  1. **Administrator.** The City Clerk, or that Person designated by the City Council to act on their behalf, shall administer this Ordinance.
  2. **Applicant.** A Person who submits an application to the City for a license to sell licensed products.

3. **Compliance Checks.** “Compliance Checks” shall mean the system the City of Gem Lake uses to investigate and ensure that those authorized to sell licensed products are in compliance with the requirements of this Ordinance. Compliance Checks shall involve the use of persons under the age of 21 years who purchase or attempt to purchase tobacco, tobacco related devices, and electronic delivery devices. Compliance Checks shall 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.
4. **Electronic Delivery Device.** “Electronic Delivery Device” shall mean 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 nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.
5. **Individually Packaged.** “Individually Packaged” shall mean the practice of selling any tobacco or tobacco products wrapped individually for sale and shall include, but not be limited to, single cigarette packs, single bags, or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco.
6. **Licensed Premises.** The real property upon which a Retail Establishment whose owner or officer, as Licensee, has been authorized under this Ordinance to sell tobacco, tobacco related devices, and electronic delivery devices.
7. **Licensed Products.** “Licensed Products” shall mean any tobacco; tobacco-related or electronic delivery device; or nicotine or lobelia product.
8. **License.** “Licensee” shall mean a person who has attained the age of twenty-one (21) years, firm, corporation, or other legal entity with a fixed Retail Establishment location in the City of Gem Lake who has been granted a license by the City of Gem Lake Council for a license to sell tobacco, tobacco related devices, and electronic delivery devices based upon submittal to the City of a completed application for said license and the fees associated thereto.
9. **Loosies.** “Loosies” shall mean the common term used to refer to a single or individually packaged cigarette.
10. **Moveable Place of Business.** “Moveable Place of Business” shall mean any form of business operated out of a truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure used for sales transactions.
11. **Nicotine or Lobelia Product.** “Nicotine or Lobelia Product” shall mean 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 Product does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.
12. **Person.** An individual, partnership, firm, corporation, association, or other legal entity excluding the City of Gem Lake, the state or any other political subdivision or other governmental entity.
13. **Retail Establishment.** “Retail Establishment” shall mean any place of business where licensed products are available for sale to the general public and shall include, but not be limited to:

grocery stores, tobacco products shops, convenience stores, liquor stores, gasoline service stations, bars, and restaurants.

14. **Sale.** “Sale” shall mean any transfer of goods for money, trade, barter, or other consideration.
15. **Self-Service Merchandising.** “Self-Service Merchandising” shall mean open displays of licensed products in any manner where any person shall have access to said items without the assistance or intervention of the Licensee or an employee of the Licensee, said assistance or intervention entailing the actual physical exchange of licensed products between the Licensee or employee of the Licensee.
16. **Self-Service Sales.** “Self-Service Sales” shall mean any sale of licensed products where there is not an actual physical exchange of said items between the customer and the Licensee or an employee of the Licensee.
17. **Tobacco or Tobacco Products.** “Tobacco” or “Tobacco Products” shall mean any substance or item containing tobacco leaf, including but not limited to: cigarettes; cigars; pipe tobacco; snuff; fine cut or other chewing tobacco; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff flowers; cavendish; shorts; plug and twist tobaccos; dipping tobaccos; refuse scraps; clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing, or smoking.
18. **Tobacco-Related Devices.** “Tobacco-Related Devices” shall mean any tobacco product as well as pipes, rolling papers, or other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, or smoking of Tobacco or Tobacco Products.
19. **Vending Machine.** “Vending Machine” shall mean any mechanical, electric or electronic, or other type of device which dispenses licensed products upon the insertion of money, tokens, or other forms of payment directly into the machine by the person seeking to purchase licensed products.

### Section 3.

1. **License Required.** It shall be unlawful for any Person to sell or offer for sale licensed products without first having obtained a license to do so from the City of Gem Lake.
2. **Application.** An application for a license to sell licensed products shall be made on a form provided by the City Clerk of the City of Gem Lake and shall be submitted to the City Clerk along with fees as required by this Ordinance. The application shall contain the full name of the applicant, the applicants title as part of the Retail Establishment, the name of the Retail Establishment for which the license is sought, the applicant’s residential and Retail Establishment addresses and telephone numbers, a complete list of all officers, owners, and/or shareholders of the Retail Establishment and the owners, officers and/or shareholders residential addresses and telephone numbers.
  1. **Moveable Place of Business.** The City shall not process any application received from a Moveable Place of Business for a license in accordance with this Ordinance and said application shall be immediately returned to the Applicant with a notice that said Applicant is ineligible for a license in accordance with Section 4.1.6 of this Ordinance.
3. **Procedures for Review of Application.** Upon receipt of an application by the City, the Administrator shall employ the following procedures in the issuance of the license:
  1. **Complete Application.** The City Clerk shall review all information contained in any application received to determine that same is complete and, if found incomplete, shall return the application to the Applicant with notice of the information necessary to make the Application complete.

2. **Investigation.** Upon receipt of a complete application, the Administrator shall forward same to the City's law enforcement agency within seven (7) days for a background investigation of the Applicant and the Retail Establishment and its officers and owners, said background investigation to be completed within ten (10) days at which time the results of the background check shall be provided to the Administrator.
4. **Action.** Upon receipt of the background investigation, the Administrator shall advise the City Clerk to place consideration of the Application and approval or denial by the City of Gem Lake Council on the agenda of the next meeting of said Council.
5. **License Fees.** No license shall be issued in accordance with this Ordinance until the appropriate fee shall be paid in full, said fees being as authorized in Minn Stat. § Chapter 461.12, Subd. 1, and as established in the City's adopted Fee Schedule, from time to time, amended.
  1. **Partial Term Fees.** Fees prescribed for issuance of a license in accordance with this Ordinance shall not be prorated when an application is received at a time that would provide an initial term following approval of less than one (1) calendar year.
6. **Term of License.** All licenses issued under this Ordinance shall be valid for the term of one (1) calendar year commencing on the first day of January and ending on the 31st day of December.
  1. **Partial Term.** If an original application is received and subsequently approved during a calendar year, the term of license shall not extend beyond the end of the calendar year in which the application was approved.
7. **Transfer of License.** All licenses issued in accordance with this Ordinance shall be valid only on the premises of the Retail Establishment for which the license was issued and only for the person to whom the license was issued. Any change in ownership of the Retail Establishment for which the license was issued shall require submittal of a new Application for license to the City and be subject to the same manner of examination and investigation as an original application.
8. **License on Display.** All licenses issued in accordance with this Ordinance shall be posted and prominently displayed on the premises of the licensed Retail Establishment so as to be in plain view of the general public. A sign not smaller than eight (8") inches by eight (8") inches stating in fonts greater than thirty-six (36) point that "Sales To Or Attempted Purchase Of Tobacco & Related Products By Persons Under the Age of 21 years Is Prohibited By Law" shall also be prominently displayed.
9. **License Renewals.** The renewal of a license issued in accordance with this Ordinance shall be handled in the same manner as the original application, except that the application for renewal shall be made at least thirty (30) days and not more than sixty (60) days prior to the expiration of the current license.
10. **Revocation or Suspension of License.** Any license issued in accordance with this Ordinance may be revoked or suspended as provided for in Section 11.1.1 of this Ordinance.

#### Section 4.

1. **Basis for Denial of License.** The following shall be grounds for denying the issuance or renewal of a license in accordance with this Ordinance; however, except as may be provided by law, the existence of any particular ground for denial does not mean that the City of Gem Lake must deny the license. If a license is mistakenly issued or renewed to a Person, it shall be immediately revoked upon the discovery that the Person was ineligible for the license under this Section.
  1. **Persons Under the Age of 21 Years.** No license shall be issued to any Applicant under the age of twenty-one (21) years.

2. **Convicted Persons.** Licenses may be denied any Applicant who has been convicted within the past five (5) years of any violation of a Federal, State, or local law, ordinance provision, or other regulation relating to licensed products.
3. **License Revocations.** A license may be denied any Applicant who has had a license to sell licensed products revoked with the twelve (12) month period preceding the effective date of receipt of Application.
4. **Information.** A license may be denied to any Applicant who fails to provide all information required on the Application or who provides false or misleading information on the Application or to City officials.
5. **Prohibited by Others.** A license shall be denied any Applicant who is prohibited by Federal, State, or other local law, ordinance, or other regulation from holding such a license.
6. **Moveable Place of Business.** A license shall be denied to any Applicant whose Retail Establishment is a Moveable Place of Business.

#### Section 5.

1. **Prohibited Sales.** It shall be unlawful for any Person to sell or offer for sale any licensed products as follows:
  1. **Sales To or By Persons under the Age of 21 Years.** To any person or by any employee under the age of twenty-one (21) years.
  2. **Vending Machines.** By means of any type of vending machine unless access by persons under the age of 21 years to the premises of the licensed Retail Establishment are prohibited by law and the premises of and vending machine in the licensed Retail Establishment are under the direct and constant control of the Licensee or employees of the Licensee who are over the age of 21 years.
  3. **Self-Service Sales and Manufacturing.** By means of self-service methods as defined in Sections 2.3.16 and 2.3.17 and whereby the customer does not need to make a verbal or written request to the Licensee or an employee of the Licensee, except as defined in Section 6.1.1.
  4. **Loosies.** By means of Loosies as defined in Section 2.3.9.
  5. **Controlled Substances.** Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, or other deleterious, hallucinogenic, toxic, or otherwise controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process.
  6. **Other Means.** By any other means, to any person, or in any other manner or form prohibited by Federal, State, or other local law, ordinance provision, or other regulation.

#### Section 6.

1. **Self-Service Sales.** It shall be unlawful for a Licensee under this Ordinance to sell or offer for sale licensed products, by any means whereby the customer may have access to such items without having to make a verbal, written, or other request of the Licensee or an employee of the Licensee and whereby there is not a physical exchange of the licensed products, between the customer and the Licensee or an employee of the Licensee. All licensed products shall be stored behind a counter, in a case, or other closed storage area not freely accessible to the general public.
  1. **Exemptions for Restricted Areas.** Under State law, the self-service restrictions described in 6.1 shall not apply to facilities that cannot be entered at any time by persons under the age of 21 years.

2. **Other Exemptions.** Under State law, the self-service restrictions described in 6.1 shall not apply to Retail Establishments which derive at least ninety (90%) percent of their gross revenue from the sale of licensed products, and where the retailer ensures that no person under the age of 21 years is present, or permitted to enter, at any time.
2. **Conversion of Premises.** Licensees under this Ordinance shall, within sixty (60) days of the effective date of Ordinance 68, but not later than the 28th day of February in the year 1998, shall bring their licensed premises into compliance with this Section, unless otherwise directed in writing by the Administrator.

#### Section 7.

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

#### Section 8.

1. **City Compliance Checks and Inspections.** From time to time, but not less than once during each term of the license, the City or its authorized agent shall conduct compliance checks by engaging persons at least 17 years of age, but under the age of 21 years, who, with the prior written consent of a parent or guardian if the person is under the age of 18 years, to enter upon the premises of the licensed Retail Establishment and to attempt to purchase licensed products as follows:
  1. **Right of Entry.** All premises of licensed Retail Establishments shall be open to inspection by the City's law enforcement agency or other authorized City official or agent of the City during regular business hours.
  2. **Supervision.** Persons under the age of 21 years used for the purpose of compliance checks shall be supervised by designated law enforcement officers or other authorized personnel of the City.
  3. **Hold Harmless.** Persons under the age of 21 years used for the purpose of compliance checks shall not be guilty of the unlawful purchase or attempted purchase nor the unlawful possession of licensed products when such items are obtained or attempted to be obtained as part of a compliance check.
  4. **False Identification.** No persons under the age of 21 years used in a compliance check shall attempt to use a false identification misrepresenting their age and all persons under the age of 21 years engaged in a compliance check shall answer all questions about their age asked by the Licensee or an employee of the Licensee and shall produce any identification, if any exists, for which the person under the age of 21 years is asked.
2. **Licensee Notification.** Immediately following a compliance check performed in accordance with this Ordinance by the City or its authorized agents, the Licensee shall be notified of the results of the compliance check.
3. **Inspection by Others.** Nothing in this Ordinance shall prohibit compliance checks authorized by State or Federal laws for educational, research, or training purposes, or required for the enforcement of a particular State or Federal law.

#### Section 9.

1. **Other Illegal Acts.** Unless otherwise provided for herein, the following acts shall be considered unlawful and in violation of this Ordinance:
  1. **Illegal Sales.** It shall be unlawful for any person to sell or otherwise provide any licensed product to any person under the age of 21 years.

2. **Illegal Possession.** It shall be unlawful for any person under the age of 21 years to have in their possession any licensed product unless such person is lawfully engaged in a compliance check under this Ordinance.
3. **Illegal Use.** It shall be unlawful for any person under the age of 21 years to smoke, chew, sniff, or otherwise use any licensed product.
4. **Illegal Procurement.** It shall be unlawful for any person under the age of 21 years to purchase or attempt to purchase or otherwise obtain any licensed product and it shall be unlawful for any person to purchase or otherwise obtain such items on behalf of a person under the age of 21 years. Further, it shall be unlawful for any person to coerce or attempt to coerce a person under the age of 21 years to illegally purchase, attempt to purchase, or otherwise obtain or use any licensed product. This Section shall not apply to persons lawfully involved in a compliance check under this Ordinance.
5. **False Identification.** It shall be unlawful for any person under the age of 21 years to attempt to disguise their true age by the use of any false form of identification, whether the identification is that of another person or one upon which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

#### **Section 10.**

1. **Violations.** The following procedures shall be implemented regarding alleged violations of this Ordinance, should the City elect to proceed with an administrative violation:
  1. **Notification of Violation.** Upon discovery of an alleged violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of their right to be heard on the accusation.
  2. **Hearings.** If a Person accused of violating this Ordinance so requests, a hearing before the City of Gem Lake Council shall be scheduled, the time and place of which shall be published and provided to the accused violator.
  3. **Findings.** If the City of Gem Lake Council finds that a violation of this Ordinance did occur, that decision, along with the Council's reasons for finding a violation and the penalty to be imposed under Section 11. of this Ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. If the Council finds that no violation has occurred or finds grounds for not imposing any penalty, such findings shall be recorded, and a copy provided to the acquitted accused violator.
  4. **Appeals.** Appeals of any Findings made in accordance with Section 10.1.3. shall be filed in Ramsey County district court for the jurisdiction of the City in which the alleged violation occurred.
  5. **Misdemeanor Prosecution.** Nothing in this Ordinance shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this Ordinance. If the City elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.
  6. **Continued Violation.** Each violation and every day in which a violation occurs or continues to occur shall constitute a separate violation.

#### **Section 11.**

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

1. **Licensees.** Any Licensee and any employee of the Licensee found to have violated this Ordinance shall be charged an administrative fine, as determined by the City’s adopted Fee Schedule, and a license suspension of not less than seven (7) days for each subsequent offense at the same premises of a licensed Retail Establishment within a twenty-four (24) month period. In addition, Licensees are subject to penalties as determined in Minnesota State Statute 461.12.
  2. **Other Individuals.** Other individuals, other than persons under the age of 21 years regulated by Section 11.1.3, found in violation of this Ordinance shall be charged an administrative fine, as determined by the City’s adopted Fee Schedule.
  3. **Persons Under the Age of 21 Years.** Persons under the age of 21 years found to have violated this Ordinance shall be subject to an administrative fine, as determined by the City’s adopted Fee Schedule and twenty (20) hours of community service approved by the City for a first violation of this Ordinance; and, an administrative fine of forty (40) hours of community service and completion of a tobacco related education or diversion program approved by the City.
  4. **Misdemeanor.** Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any violation of this Ordinance.
2. **Criminal Penalties.** Any Person who violates any of the provisions of this Ordinance which prescribe that certain action is unlawful and in violation of this Ordinance shall be guilty of a misdemeanor and, upon prosecution and conviction thereof, shall be fined in an amount, as established by the City’s adopted Fee Schedule, or imprisonment up to thirty (30) days or both for each subsequent violation within a twenty-four (24) month period. Each violation and every day in which a violation occurs or continues to occur shall constitute a separate violation.

**Section 12.**

1. **Exceptions and Defenses.** Nothing in this Ordinance shall prevent the providing licensed products to a person under the age of 21 years as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this Ordinance for a person to have reasonably relied upon proof of age as described by State law.

**Section 13.**

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

**Section 14.**

1. **Effective Date.** This Ordinance shall take effect and be in force from and after its passage and publication.

Dated: May 21, 2024

APPROVED:

Gretchen Artig-Swomley  
Gretchen Artig-Swomley, Mayor

ATTEST:

Melissa Lawrence  
Melissa Lawrence, Acting City Clerk



**City of Gem Lake, Ramsey County, Minnesota  
Tobacco and Nicotine Regulation  
Ordinance No. 68 Legend**

The Ordinance regulating the sale, distribution, possession, and use of tobacco, tobacco products and tobacco related devices was originally enacted by the City Council as Ordinance No. 68 on 13 March 1998. Since that time, the City Council has made amendments to the Ordinance in keeping with changes in State law and the wishes of the community. The following table indicates the original Ordinance and the said amendments.

<b>Ordinance</b>	<b>Description</b>	<b>Enactment</b>
68	An Ordinance regulating the sale, distribution, possession, and use of tobacco, tobacco products and tobacco related devices	13 March 1998
115	An Ordinance amending Ordinance No. 68, increasing the penalties for violations of the Ordinance.	18 May 2010
68	Ordinance 68 updated to reflect 2024 federal and state legislation: <ul style="list-style-type: none"> <li>- Adding “nicotine or lobelia”</li> <li>- Replacing “minors” and “18 years” with “persons under the age of 21 years”</li> <li>- Defining all tobacco and nicotine products as “licensed products” for conciseness</li> <li>- Referring all fines for violation to the “City’s adopted Fee Schedule”.</li> </ul>	21 May 2024