



**REGULAR CITY COUNCIL MEETING
RICHFIELD MUNICIPAL CENTER, COUNCIL CHAMBERS
JULY 25, 2023
7:00 PM**

INTRODUCTORY PROCEEDINGS

Call to order

Pledge of Allegiance

Open forum

Call into the open forum by dialing 1-415-655-0001 Use webinar access code: 2633 091 4443 and password: 1234.

Please refer to the Council Agenda & Minutes web page for additional ways to submit comments.

Approval of the Minutes of the (1) City Council Work Session of July 11, 2023; and (2) City Council Meeting of July 11, 2023.

PRESENTATIONS

1. Proclamation Celebrating the Passage of the Americans with Disabilities Act

AGENDA APPROVAL

2. Approval of the Agenda
3. **Consent Calendar contains several separate items, which are acted upon by the City Council in one motion. Once the Consent Calendar has been approved, the individual items and recommended actions have also been approved. No further Council action on these items is necessary. However, any Council Member may request that an item be removed from the Consent Calendar and placed on the regular agenda for Council discussion and action. All items listed on the Consent Calendar are recommended for approval.**

- A. Consider an interim ordinance repealing transitory ordinance 19.26, which authorized a study and imposed a moratorium on the sale of edible cannabinoid products.

Staff Report No. 89

4. Consideration of items, if any, removed from Consent Calendar

PROPOSED ORDINANCES

5. Consider approval of the first reading of an interim ordinance authorizing a study and imposing a moratorium on the operation of cannabis businesses in the City until January 1, 2025, unless repealed earlier at an earlier date by the City Council.

Staff Report No. 90

6. Consider the approval of the first reading of an ordinance amending Chapter 11, Section 1146 of the Richfield City Code to include eliminating the sale of flavored products and capping the number of tobacco licenses.

Staff Report No. 91

RESOLUTIONS

7. Consider the approval of a Resolution Approving 2023 State Legislation for a Local Option Sales Tax in Richfield.

Staff Report No. 92

CITY MANAGER'S REPORT

8. City Manager's Report

CLAIMS AND PAYROLLS

9. Claims and Payroll

COUNCIL DISCUSSION

10. Hats Off to Hometown Hits
11. Adjournment

Auxiliary aids for individuals with disabilities are available upon request. Requests must be made at least 96 hours in advance to the City Clerk at 612-861-9739.



CITY COUNCIL MEETING MINUTES

Richfield, Minnesota

City Council Work Session

July 11, 2023

CALL TO ORDER

Mayor Supple called the work session to order at 5:45 p.m. in the Bartholomew Room.

Council Members Present: Mary Supple, Mayor; Simon Trautmann; Sean Hayford Oleary; and Sharon Christensen

Council Members Absent: Ben Whalen

Staff Present: Katie Rodriguez, City Manager; Dustin Leslie, City Clerk; Sack Thongvanh, Assistant City Manager; Jay Henthorne, Police Chief; Chris Fierst, Liquor Store Manager; Jennifer Anderson, Health Administrator; Samantha Crosby, Planner; Mary Tietjen, City Attorney

ITEM #1

PRESENTATION, POLICY RECOMMENDATIONS, AND DISCUSSION OF THE NEW ADULT USE CANNABIS LAW, AND EDIBLE CANNABINOID PRODUCTS (ECPS)/LOW-POTENCY EDIBLES AS IT RELATES TO CITY REGULATION

City Manager Rodriguez introduced the topic and spoke about the Edible Cannabinoid Product (ECP) moratorium as well as new legislation.

Health Administrator Anderson began the presentation by covering how cities would be able to regulate the cannabis business. Mayor Supple asked staff to define cannabis business. City Attorney Tietjen stated a cannabis business was any operation that sells cannabis products.

Health Administrator Anderson continued the presentation by covering the business registration process for the city and the state.

Chief Henthorne spoke about ECPs and considerations with the new law passed by the legislature.

Liquor Store Manager Fierst gave an update on liquor store operations and revenues. He noted that the ability to sell ECPs may be able to offset the loss of tobacco products in stores. Council Members discussed selling low-potency THC products in Richfield liquor stores and came to a consensus in supporting ECP sales. City Attorney Tietjen stated liquor stores could not sell high potency cannabis products but cities could operate a municipal cannabis business.

Health Administrator Anderson and Chief Henthorne discussed hemp products vs. cannabis products as well as its future regulation. He also spoke of considerations for the police department including staff training, violations, and enforcement. He then spoke about law changes regarding ECPs that have gone into effect since the moratorium was put into place.

Health Administrator Anderson showed Council an example of a Cannabis Buffer Map that would be the most restrictive possible. Council Member Hayford O'Leary asked if new zoning was to be approved for adult-use cannabis if it would replace zoning for medical cannabis. Director Poehlman confirmed it would.

Council Member Hayford O'Leary asked staff if buffers worked. Chief Henthorne stated they helped with appearance and could lessen the number of complaints. Council Member Hayford O'Leary stated he preferred no buffers for ECPs but would be more open to them for adult-use cannabis.

Council Member Christensen noted parks currently prohibit smoking and alcohol use and asked if THC would be prohibited as well. Director Poehlman stated staff was looking for guidance from Council on what restrictions should be put in place.

Mayor Supple spoke about making decisions about zoning and asked if changes were made later if that could cause THC businesses to become non-conforming to the law in the future. Director Poehlman confirmed that would be a risk.

Mayor Supple asked what the purpose of buffers was. City Attorney Tietjen stated they would be to limit access in certain areas. Mayor Supple stated she did not think there should be buffers for ECPs but did support an ordinance prohibiting consumption in parks.

Council Member Hayford O'Leary spoke about the possibility of allowing consumption of low abv alcohol in parks in the future and did not think the city should prevent residents from consuming ECPs in parks.

Council Member Hayford O'Leary asked Council Members if they were supportive of capping the amount of cannabis shops in Richfield. Council Member Trautmann and Mayor Supple agreed that there should be a limit on dispensaries in the city.

Health Administrator Anderson spoke about options in capping the amount of adult-use cannabis licenses in the city. She said four could be distributed across the city. Council Member Trautmann noted that he was comfortable with a limit of two shops if that was the most restrictive cap per population – one could be in east Richfield and one could be in West Richfield. Council Member Christensen noted the limit could be raised in the future. Mayor Supple stated she was comfortable with three or four in the city.

Director Poehlman asked if cities were allowed to require geographical distributions across the city. City Tietjen replied that it was unclear if that was allowed.

Health Administrator Anderson spoke about next steps in the process and asked Council to decide on what they wanted to do in regard to the ECP moratorium and if they wanted to put an adult-use cannabis moratorium in place.

Council agreed with lifting the ECP moratorium and doing nothing to restrict where could it be sold.

Health Administrator Anderson spoke about having a moratorium for adult-use cannabis until January 1, 2025. She said it would give the city some teeth in enforcing violations against illegal cannabis operations prior to the availability of licensing. Council came to consensus in having a moratorium on adult-use cannabis.

ADJOURNMENT

Mayor Supple adjourned the work session at 6:57 pm

Date Approved: July 25, 2023

Mary B. Supple
Council Member

Dustin Leslie
City Clerk

Katie Rodriguez
City Manager



CITY COUNCIL MEETING MINUTES

Richfield, Minnesota

Regular Council Meeting

July 11, 2023

CALL TO ORDER

The meeting was called to order by Mayor Supple at 7:00 p.m. in the Council Chambers.

Council Members Present: Mary Supple, Mayor; Sharon Christensen; Simon Trautmann; and Sean Hayford Oleary

Council Members Absent: Ben Whalen

Staff Present: Katie Rodriguez, City Manager; Mary Tietjen, City Attorney; and Dustin Leslie, City Clerk

Others Present:

PLEDGE OF ALLEGIANCE

Mayor Supple led the Pledge of Allegiance.

OPEN FORUM

Mayor Supple reviewed the options to participate:

- Participate live by calling 1-415-655-0001 during the open forum portion
- Call prior to meeting 612-861-9711
- Email prior to meeting kwynn@richfieldmn.gov

Ruane Onesirosan, 2421 W. 65th Street, handed out two documents to the Council supporting her viewpoint the action taken by the City Housing and Redevelopment Authority on June 5, 2023, was unlawful and unbinding and read from a prepared statement regarding those documents. She also noted she had spoken at the June 27, 2023 Open Forum where she requested information be provided regarding salaries and benefits the City paid to council members.

APPROVAL OF MINUTES

M/Hayford Oleary, S/Trautmann to approve the minutes of the: (1) City Council Work Session of June 27, 2023; (2) City Council Meeting of June 27, 2023.

Motion carried: 4-0

ITEM #1	APPROVAL OF THE AGENDA
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M/Trautmann, S/Christensen to approve the agenda.

Motion carried: 4-0

ITEM #2	CONSENT CALENDAR
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City Manager Rodriguez presented the consent calendar.

A. Consider adoption of a resolution designating polling places for 2023 (Staff Report No. 86)

RESOLUTION NO. 12108

**RESOLUTION DESIGNATING POLLING PLACES FOR
2023**

B. Consider a request for a Conditional Use Permit to allow a 48-child pre-school and day care at 7227 Penn Avenue South (St. Nicholas Episcopal Church) (Staff Report No. 87)

RESOLUTION NO. 12109

**RESOLUTION APPROVING A CONDITIONAL USE
PERMIT FOR A PRESCHOOL AND DAY CARE AT 7227
PENN AVENUE SOUTH**

M/Trautmann, S/Hayford Oleary to approve the consent calendar.

Motion carried: 4-0

ITEM #3	CONSIDERATION OF ITEMS, IF ANY, REMOVED FROM CONSENT CALENDAR
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None.

ITEM #4	CONSIDER THE ADOPTION OF A RESOLUTION APPOINTING A REPRESENTATIVE TO THE BOARD OF DIRECTORS OF THE RICHFIELD TOURISM PROMOTION BOARD. (STAFF REPORT NO. 88)
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Hayford Oleary presented Staff Report 88.

M/Hayford Oleary, S/Christensen to adopt a resolution appointing at-large citizen Director to the Board of Directors of the Richfield Tourism Promotion Board, Inc.

RESOLUTION NO. 12110

RESOLUTION APPOINTING AT-LARGE CITIZEN DIRECTOR TO THE BOARD OF DIRECTORS OF THE RICHFIELD TOURISM PROMOTION BOARD, INC.

Motion carried: 4-0

ITEM #5	CITY MANAGER'S REPORT
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City Manager Rodriguez stated she had no report.

ITEM #6	CLAIMS AND PAYROLL
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M/Trautmann, S/Christensen that the following claims and payrolls be approved:

<u>U.S. BANK</u>	<u>07/11/2023</u>
A/P Checks: 322316-322607	\$4,643,390.54
Payroll: 179749-180117; 43652; 43653; 43564	<u>\$563,297.90</u>
TOTAL	\$5,206,688.44

Motion carried: 4-0

ITEM #7	HATS OFF TO HOMETOWN HITS
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Council Member Christensen stated she had visited the food truck last Friday and recommended Soul to Soul BBQ.

Council Member Trautmann gave hats off to Penn Fest coming up this Fall and encouraged residents to get involved. He stated they were also looking for interested people to help organize a parade next year for Red, White & Blue Days.

Council Member Hayford Oleary noted the date for the Joyful Riders Ride is August 9.

Mayor Supple thanked Council Member Whalen for running the last Work Session and Council Member Trautmann for running the last Council meeting. She gave a shout out to Director Markel and staff for putting on The Little Sparklers event. She also gave a shout out to everyone involved in the Farmers Market. She stated a resident wanted her to give a shout out to the Community Center staff on the fine job they were doing. She indicated Council Member Hayford Oleary and she went to the Woodlake Point Condominium and they had a great conversation.

ITEM #8	ADJOURNMENT
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M/Trautmann, S/Hayford Oleary to adjourn the meeting at 7:15 p.m.

Motion carried: 4-0

Date Approved: July 25, 2023

Mary B. Supple
Mayor

Dustin Leslie
City Clerk

Katie Rodriguez
City Manager



Proclamation of the City of Richfield

WHEREAS, the Americans with Disabilities Act (ADA) was passed on July 26, 1990, to ensure the civil rights of citizens with disabilities; and

WHEREAS, the City of Richfield affirms the principles of equality and inclusion for persons with disabilities as embodied in the ADA, the laws of the State of Minnesota, and ordinances of the City of Richfield; and

WHEREAS, numerous organizations in the City of Richfield work with constituents and communities to bring forth the promise of hope and freedom that is envisaged by the passage of the ADA; and

WHEREAS, the City of Richfield is committed to providing accessible services to residents with disabilities through such programs as the Adaptive Recreation & Learning Exchange Cooperative, which offers opportunities for people with disabilities to actively participate in recreation, leisure and community education opportunities specifically designed to meet the needs of people with disabilities in; and

WHEREAS, people with disabilities make up approximately 8.4% of the population of the City of Richfield; and

WHEREAS, July 26, 2023, celebrates the anniversary of the Americans with Disabilities Act; and

WHEREAS, the City of Richfield strives to promote an environment of equity and inclusion; and

WHEREAS, the Richfield Human Rights Commission supported this proclamation at its July 6, 2023 meeting and recommended the Richfield City Council do the same; and

Now, THEREFORE, I, Mary Supple, Mayor of Richfield, on behalf of the Richfield City Council, do hereby proclaim the month of July 2023 as Americans with Disabilities Act Awareness month in the City of Richfield and call on the people of Richfield to observe this month with appropriate programs, activities, and ceremonies, and continue to honor the contributions of persons with disabilities throughout the year.

PROCLAIMED this 25th day of July 2023.

Mary B. Supple, Mayor



STAFF REPORT NO. 89
CITY COUNCIL MEETING
7/25/2023

REPORT PREPARED BY: Jennifer Anderson, Support Services Manager

DEPARTMENT DIRECTOR REVIEW: Jay Henthorne, Director of Public Safety/Chief of Police
7/19/2023

OTHER DEPARTMENT REVIEW:

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
7/19/2023

ITEM FOR COUNCIL CONSIDERATION:

Consider an interim ordinance repealing transitory ordinance 19.26, which authorized a study and imposed a moratorium on the sale of edible cannabinoid products.

EXECUTIVE SUMMARY:

On July 1, 2022, it became legal to sell certain products containing delta-9 (THC products) in Minnesota. The legislation allows THC products to be sold if the following requirements are met:

- Not more than 5mg of THC per dose
- Not more than 50 mg of THC per container
- The purchaser is at least 21 years old.
- The products are not marketed towards children.

On October 25, 2022, the Richfield City Council approved a one year moratorium on selling THC products. The moratorium went into effect on December 3, 2022 and expires on December 3, 2023, or the City Council repeals it.

RECOMMENDED ACTION:

By Motion: Approve the first reading of an ordinance repealing interim ordinance 19.26 which authorized a study and imposed a moratorium on the sale of edible cannabinoid products, and schedule a second reading of the ordinance for August 8, 2023.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

On July 1, 2022, it became legal to sell certain products containing delta-9 (THC products) in Minnesota. The legislation allows THC products to be sold if certain requirements are met including that there are not more than 5mg of THC per dose and 50 mg of THC per container; the purchaser is at least 21 years old; and the products are not marketed towards children.

On October 25, 2022, the Richfield City Council approved a one year moratorium on THC products. The moratorium went into effect on December 3, 2022 and is in effect until it expires on December 3, 2023, or the City Council repeals it.

With the advent of adult use cannabis, in a July 11, 2023 work session, staff provided the City Council with recommendations, including to repeal interim ordinance 19.26, and not temporarily license businesses that sell these products. Businesses who sell these products in Richfield will need to register with the Minnesota Department of Health by October 1, 2023.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

The city of Richfield addresses medical cannabis in the Zoning code.

C. CRITICAL TIMING ISSUES:

Regulations for retailers wanting to sell edible cannabinoid products will be overseen by the Minnesota Department of Health (MDH) until the Office of Cannabis Management is open. These retailers will need to register with MDH by October 1, 2023.

D. FINANCIAL IMPACT:

There will be a financial impact in Public Safety due to the mandated compliance checks of retailers selling edible cannabinoid products. Compliance checks must be conducted to address age verification, operational requirements and product THC limits. Public Safety staff will also need to be trained to conduct these specific compliance checks.

E. LEGAL CONSIDERATION:

The City Attorney has reviewed the proposed ordinance and approves of its contents.

ALTERNATIVE RECOMMENDATION(S):

The City Council could decide to not repeal interim ordinance 19.26 and direct staff on how to proceed.

PRINCIPAL PARTIES EXPECTED AT MEETING:

ATTACHMENTS:

Description	Type
□ Ordinance to repeal 19.26	Cover Memo

BILL NO. _____

**AN INTERIM ORDINANCE
REPEALING TRANSITORY ORDINANCE 19.26 THAT AUTHORIZED A STUDY AND
IMPOSED A MORATORIUM ON THE SALE OF EDIBLE CANNABINOID PRODUCTS**

THE CITY OF RICHFIELD DOES ORDAIN:

Sec. 1. Transitory Ordinance 19.26 is hereby repealed.

Sec. 2. This Ordinance is effective in accordance with Section 3.09 of the Richfield City Charter.

Adopted by the City Council of the City of Richfield on this 8th day of August 2023.

Mary Supple, Mayor

ATTEST:

Dustin Leslie, City Clerk



STAFF REPORT NO. 90
CITY COUNCIL MEETING
7/25/2023

REPORT PREPARED BY: Jennifer Anderson, Support Services Manager

DEPARTMENT DIRECTOR REVIEW: Jay Henthorne, Director of Public Safety/Chief of Police
7/19/2023

OTHER DEPARTMENT REVIEW:

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
7/19/2023

ITEM FOR COUNCIL CONSIDERATION:

Consider approval of the first reading of an interim ordinance authorizing a study and imposing a moratorium on the operation of cannabis businesses in the City until January 1, 2025, unless repealed earlier at an earlier date by the City Council.

EXECUTIVE SUMMARY:

The Minnesota Legislature recently enacted, and the Governor signed, 2023 Minnesota Session Laws, Chapter 63 - H.F. No. 100 ("the Act"), which is comprehensive legislation relating to adult use cannabis.

The Act provides that if a city is "conducting studies or has authorized a study to be conducted or has held or has scheduled a hearing for the purpose of considering adoption or amendment of reasonable restrictions on the time, place, and manner of the operation of a cannabis business, the governing body of the local unit of government may adopt an interim ordinance applicable to all or part of its jurisdiction for the purpose of protecting the planning process and the health, safety, and welfare of its citizens." As part of a city's interim ordinance, the city may prohibit a cannabis business from opening until January 1, 2025.

The City Council held a work session on July 11, 2023 to hear staff recommendations and discuss the Adult Use Cannabis legislation, required city regulation and its impacts on the city. Staff were directed by the City Council to bring a first reading of an interim ordinance to the July 25, 2023 city council meeting, imposing a moratorium on the operation of cannabis businesses until January 1, 2025.

The City Council can repeal the adult use cannabis moratorium earlier if the City is notified by the OCM that a license application is pending approval before January 1, 2025. The City has 30 days to respond to the OCM on whether the business meets city zoning and building regulations.

RECOMMENDED ACTION:

By Motion: Approve the first reading of an interim ordinance authorizing a study and imposing a moratorium on the operation of cannabis businesses in the City until January 1, 2025, and set a public hearing for August 8, 2023.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

The Minnesota Legislature recently enacted, and the Governor signed, 2023 Minnesota Session Laws, Chapter 63 - H.F. No. 100 ("the Act"), which is comprehensive legislation relating to Cannabis including, but not limited to, the establishment of the Office of Cannabis Management ("OCM"); legalizing and limiting the possession and use of cannabis and certain hemp products by adults; providing for the licensing, inspection, and regulation of cannabis businesses and hemp businesses; taxing the sale of cannabis flower, cannabis products, and certain hemp products; establishing grant and loan programs; amending criminal penalties; providing for expungement of certain convictions and providing for the temporary regulation of certain edible cannabinoid products.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

The City Council passed a moratorium on edible cannabinoid products in 2022, and will consider the repeal of the moratorium at the August 8, 2023 City Council meeting.

C. CRITICAL TIMING ISSUES:

Enacting the moratorium on the operation of cannabis businesses in the City gives the City the authority to initiate any legal action deemed necessary to secure compliance with this Ordinance.

D. FINANCIAL IMPACT:

The financial impact of this legislation is unknown at this time. Staff will have a better idea of possible impacts after October 1, 2023, the deadline for businesses selling edible cannabinoid products to register with the state.

E. LEGAL CONSIDERATION:

The City Attorney has reviewed the proposed interim ordinance and approves of its contents.

ALTERNATIVE RECOMMENDATION(S):

The City Council could decide to not approve the first reading of the moratorium and direct staff on how to proceed.

PRINCIPAL PARTIES EXPECTED AT MEETING:

ATTACHMENTS:

Description	Type
▣ AUC moratorium	Cover Memo

BILL NO. 2023-____

TRANSITORY ORDINANCE NO. ____

**AN INTERIM ORDINANCE AUTHORIZING A STUDY AND IMPOSING A
MORATORIUM ON THE OPERATION OF CANNABIS BUSINESSES WITHIN THE
CITY OF RICHFIELD**

THE CITY OF RICHFIELD DOES ORDAIN:

Section 1. Legislative Findings and Authority.

- (A) The Minnesota Legislature recently enacted, and the Governor signed, 2023 Minnesota Session Laws, Chapter 63 – H.F. No. 100 (the “Act”), which is comprehensive legislation relating to cannabis including, but not limited to, the establishment of the Office of Cannabis Management (“OCM”), legalizing and limiting the possession and use of cannabis and certain hemp products by adults, providing for the licensing, inspection, and regulation of cannabis and hemp businesses, taxing the sale of cannabis flower, cannabis products, and certain hemp products, establishing grant and loan programs, amending criminal penalties, providing for expungement of certain convictions, and providing for the temporary regulation of Edible Cannabinoid Products.
- (B) The Act provides local units of government certain authority related to Cannabis Businesses, including the authority to (i) require local registration of certain Cannabis Businesses operating retail establishments, (ii) adopt reasonable restrictions on the time, place, and manner of the operation of Cannabis Businesses, provided that such restrictions do not prohibit the establishment or operation of a Cannabis Business, (iii) limit the number of certain Cannabis Businesses based on the population of the community, and (iv) prohibit the operation of a Cannabis Business within 1,000 feet of a school, or 500 feet of a day care, residential treatment facility, or an attraction within a public park that is regularly used by minors, including a playground or athletic field.
- (C) The Act requires the OCM, which was established effective July 1, 2023, to work with local governments to develop model ordinances for reasonable restrictions on the time, place, and manner of the operation of Cannabis Businesses. The Act also requires the OCM to establish additional rules and regulations relating to the operation of Cannabis Businesses. It is anticipated that the city of Richfield (the “City”) will benefit from reviewing and analyzing the OCM’s model ordinances, rules, and regulations before making any decisions related to the regulation of Cannabis Businesses in the City.
- (D) The Act (Minnesota Statutes, section 342.13(e)) expressly allows a local unit of government that is conducting studies or has authorized a study to be conducted or has held or scheduled a hearing for the purpose of considering

adoption or amendment of reasonable restrictions on the time, place and manner of the operation of Cannabis Businesses to adopt an interim ordinance applicable to all or part of its jurisdiction for the purpose of protecting the planning process and the health, safety, and welfare of its citizens. The interim ordinance may regulate, restrict, or prohibit the operation of Cannabis Businesses within the jurisdiction or a portion thereof until January 1, 2025.

- (E) Given the uncertainty regarding the model ordinances to be developed by the OCM and the broad scope of the changes to Minnesota law brought about by the Act, the City desires to adopt an interim ordinance for the purpose of protecting the planning process and the health, safety, and welfare of its citizens.
- (F) The City desires to conduct a study for the purpose of considering the adoption or amendment of reasonable restrictions on the time, place, and manner of the operation of Cannabis Businesses as well as the other regulations local units of government may adopt under the Act.
- (G) On _____, 2023, after providing at least 10 days published notice, the City Council held a public hearing regarding the consideration and adoption of an interim ordinance prohibiting the operation of Cannabis Businesses within the City until January 1, 2025.

Section 2. Definitions. For purposes of this Ordinance, the following terms shall have the meaning given them in this section.

- (A) “Act” means 2023 Minnesota Session Laws, Chapter 63 (H.F. No. 100).
- (B) “Cannabis Business” has the meaning given the term in Minnesota Statutes, section 342.01, subdivision 14.
- (C) “City” means the city of Richfield, a Minnesota municipal corporation.
- (D) “Edible Cannabinoid Product” has the meaning given the term in Minnesota Statutes, section 151.72, subdivision 1(f).
- (E) “OCM” means the Office of Cannabis Management, established as set forth in Minnesota Statutes, section 342.02, subd. 1.
- (F) “Ordinance” means this interim ordinance, which is adopted pursuant to Minnesota Statutes, section 342.13(e).

Section 3. Study Authorized. The City Council hereby authorizes and directs City staff to conduct a study regarding the adoption or amendment of reasonable restrictions on the time, place, and manner of the operation of Cannabis Businesses, as well as other potential local regulations allowed under the Act, and report to the City Council on the

potential regulation of Cannabis Businesses. The study may include a review of any model ordinances that OCM is directed to draft under Minnesota Statutes, section 342.13(d), an analysis of potential setback regulations allowed under Minnesota Statutes, section 342.13(c), and such other matters as staff may determine are relevant to the City Council's consideration of this matter. The report may also include City staff's recommendations on whether the City Council should adopt regulations and, if so, the recommended types of regulations.

Section 4. Moratorium. A moratorium is hereby imposed on the operation of any Cannabis Business within the City. During the term of this Ordinance, no business, person, or entity may establish or operate a Cannabis Business within the jurisdictional boundaries of the City. Accordingly, during the period that this Ordinance is in effect, the City shall not accept, process, or act on any application, site plan, building permit, zoning request, or other approval, including any requested confirmation, certification, approval, or other request from the OCM or other governmental entity requesting City review of any application or proposal for a business proposing to engage in the operation of a Cannabis Business. During the term of the moratorium, it is a violation of this Ordinance for any business, person, or entity to establish or operate a Cannabis Business within the City.

Section 5. Exceptions. The moratorium imposed by this Ordinance does not apply to: (i) the continued operation of a duly established business as part of the Medical Cannabis Program administered by the Minnesota Department of Health that was lawfully operating within the City prior to the effective date of this Ordinance; or (ii) the sale of Edible Cannabinoid Products, provided, however, that nothing in this Ordinance exempts a business, person, or entity from complying with all other requirements and prohibitions of applicable laws and ordinances related to such exceptions.

Section 6. Enforcement. Violation of this Ordinance is a misdemeanor. The City may also enforce this Ordinance by mandamus, injunction, or other appropriate civil remedy in any court of competent jurisdiction. A violation of this Ordinance is also subject to the City's general penalties prescribed in the city code and may further result in the City reporting violations to the OCM, if relevant to OCM licensing. The City Council hereby authorizes City staff and consultants to initiate any legal action deemed necessary to secure compliance with this Ordinance.

Section 7. Severability. Every section, provision, and part of this Ordinance is declared severable from every other section, provision, and part. If any section, provision, or part of this Ordinance is held to be invalid by a court of competent jurisdiction, such judgment shall not invalidate any other section, provision, or part of this Ordinance.

Section 8. Effective Date and Term. This Ordinance shall be effective in accordance with Section 3.09 of the Richfield City Charter and shall remain in effect until January 1, 2025, or until the City Council expressly repeals it, whichever occurs first.

Adopted by the City Council of the City of Richfield on this ____ day of _____,
2023.

Mary Supple, Mayor

Attest:

Dustin Leslie, City Clerk



STAFF REPORT NO. 91
CITY COUNCIL MEETING
7/25/2023

REPORT PREPARED BY: Jennifer Anderson, Support Services Manager

DEPARTMENT DIRECTOR REVIEW: Jay Henthorne, Director of Public Safety/Chief of Police
7/19/2023

OTHER DEPARTMENT REVIEW:

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
7/19/2023

ITEM FOR COUNCIL CONSIDERATION:

Consider the approval of the first reading of an ordinance amending Chapter 11, Section 1146 of the Richfield City Code to include eliminating the sale of flavored products and capping the number of tobacco licenses.

EXECUTIVE SUMMARY:

The Richfield Advisory Board of Health (ABH) is charged with bringing recommendations to the City Council related to community health and has a long history of advocating for sound health policies that protect residents.

In their continued effort to protect youth and adults, particularly members of the LGBTQ+ and black communities who have been historically targeted by the tobacco companies, from the harms of tobacco products, the ABH is recommending prohibiting the sale of flavored tobacco products and placing a cap on the number of tobacco licenses issued to four. Reducing the number of tobacco licenses will take time since current licenses are only revoked when a current licensee moves or the business changes ownership.

Work sessions with City Council members were held March 22, 2022 and March 28, 2023.

RECOMMENDED ACTION:

By motion: Approve the first reading of an ordinance amending Chapter 11, Section 1146 of the Richfield City Code to include prohibiting the sale of all flavored products and reduce the number of tobacco licenses to four, and schedule a second reading of the ordinance for August 8, 2023.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

Because of their sweet flavors, low cost and attractive packaging, flavored products are especially appealing to youth, who are much more likely to use flavored products than adults. Young people perceive flavored products as tasting better and being safer than unflavored products, even though they are just as dangerous and addictive as unflavored cigarettes.

States and localities can adopt sales restrictions to address menthol cigarettes and other flavored

products that appeal to youth. Six states and more than 170 U.S. localities have prohibited the sale of all flavored products including menthol cigarettes. Currently, over 25% of Minnesotans are covered by a flavored policy. Richfield would be joining Traverse County, Fridley, Columbia Heights, Minneapolis, Shoreview, Arden Hills, Lauderdale, St. Paul, Lilydale, Mendota Heights, Moorhead, Golden Valley, Edina and Bloomington by approving these policy recommendations.

Review of Proposed Ordinance Changes by Section:

Findings and Purpose: Additional findings are added to support capping licenses and flavor prohibition.

Definitions: Updated to align with State law, while adding new definitions for Flavored Product, Child-Resistant Packaging and Indoor Area.

Sale/distribution: Proposed language added to reflect a limit of 4 licenses allowed by the city. License transfers are prohibited. Should a business move or change ownership, the tobacco license would be revoked.

Prohibitions: Proposed language prohibits smoking/sampling in all retail establishments licensed under the ordinance and prohibits the sale of flavored products.

Self-Service Sales: Self-service sales are prohibited unless a licensee sells at least 90% of its products in licensed products. Proposed language eliminates this exception and provides a stronger policy prohibiting self-service sales in all licensed establishments.

Other prohibited acts: Prohibits furnishing of/procuring/coercion of licensed products to underage youth.

Violations: Details out a hearing process and proposes fees for a hearing.

Penalties: This section is updated to meet State minimums. The current penalty structure is strong, but unique, with the reset of a violation to the previous violation instead of resetting to the first violation. Proposed language shifts the lookback period to 36 months instead of 24 months. Diversion penalties would apply for use of a false ID by someone under the age of 21.

Effective Date: Communicates an effective date of implementation changes determined by the City Council.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

Chapter 11, Section 1146 regulates the sale, possession, and use of tobacco and related devices and products and is intended to protect young people against the serious effects associated with tobacco use.

A formal public hearing is not required, but the City Council could allow public comment on the proposed ordinance changes during the open comment period of the meeting.

C. CRITICAL TIMING ISSUES:

D. FINANCIAL IMPACT:

The 2023 tobacco license fee is \$541 and there are 25 tobacco licenses issued. This generated \$13,525 in revenue. By capping licenses at four, this will reduce licensing revenue over the coming years.

E. LEGAL CONSIDERATION:

The City Attorney has reviewed the proposed ordinance and approves of its contents.

ALTERNATIVE RECOMMENDATION(S):

The City Council may decide to not approve the first reading of the ordinance and direct staff how to proceed.

PRINCIPAL PARTIES EXPECTED AT MEETING:

Proponents and opponents of the flavor restriction/license cap, including community members and business owners.

ATTACHMENTS:

Description		Type
☐	Flavored tobacco fact sheet	Cover Memo
☐	Flavor fact citations	Cover Memo
☐	Ordinance amending Chapter 11 Section 1146-Tobacco	Ordinance



FLAVORED TOBACCO* PRODUCTS

*The term “tobacco” used here, and throughout this fact sheet, refers to commercial tobacco products and not to sacred and traditional use of tobacco by some American Indian communities.



Vape product packaging is available in colorful designs and often resembles popular imagery familiar to youth.



Vapes come in thousands of flavors such as Rainbow Candy (shown above), Blue Raspberry Ice and Cotton Candy



Cheap cigars come in bright packages and a wide variety of flavors, such as grape, strawberry, blueberry, tropical fusion and chocolate/vanilla swirl.



Photo Credit: Trinkets and Trash

WHAT TYPES OF TOBACCO PRODUCTS ARE FLAVORED?

Flavored tobacco products include cigarettes, cigars, chewing tobacco, blunt wraps, electronic cigarettes (aka e-cigarettes or vapes), and shisha (the tobacco used in hookah). These products help the tobacco industry get around the FDA’s 2009 ban of flavored cigarettes other than menthol. Menthol is the only flavor allowed in cigarettes.

WHAT ARE SOME COMMON FLAVORS USED IN TOBACCO PRODUCTS?

There are more than 15,000 e-cigarette flavors on the market including a variety of youth-friendly flavors like *Cereal Milk*, *Bazooka Sour Straws* and *Gummy Worm*. E-cigarettes, specifically disposable vapes, are the most popular tobacco product used by youth.²

Cigars, chewing tobacco, blunt wraps, vapes and shisha are sold in fruit, candy, dessert and novelty flavors. Popular flavors include chocolate, piña colada, apple, grape, berry, cotton candy, bubble gum, mango, mint/ wintergreen and menthol.

These are “truly candy-flavored tobacco products” as the same chemical flavorings used in tobacco products are also used in popular candy and fruity drinks.³

Tobacco companies add menthol to tobacco products to cool the throat and make them taste better.⁴

WHO USES FLAVORED TOBACCO PRODUCTS?

The tobacco industry⁵ uses flavored tobacco to attract the next generation of smokers.

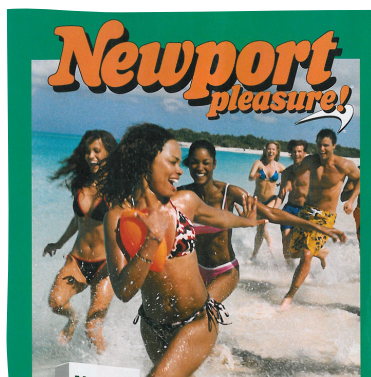
Young people are much more likely to use flavored tobacco products than adults, and most young users said they would no longer use the product if it was not flavored.⁶

In fact, 85 percent of youth who vape use fruit, candy or menthol flavored products.⁷



Nontherapeutic nicotine lozenges, nicotine pouches and nicotine gummies like these pictured above are the second most prevalent nicotine product used by adolescents.

MORE ABOUT MENTHOL FLAVORED TOBACCO



The tobacco industry heavily targets African Americans with menthol tobacco by advertising in popular magazines.



Photo credit: Trickets and Trash



Photo credit: Trickets and Trash



Photo credit: Trickets and Trash

References are available at ansrmn.org/flavors

The tobacco industry has a long history of aggressively targeting certain populations with menthol tobacco marketing including racial and ethnic minority groups, particularly African Americans; youth; women; and LGBTQ+ people.^{9,10}

HOW DOES THIS IMPACT COMMUNITIES?

Flavored tobacco is a threat to health equity. For example, because of industry targeting, 85% of African American cigarette users smoke menthols.¹⁰ Menthol flavored tobacco is easier to start and harder to quit¹³ than quitting non-menthol cigarettes and African Americans menthol smokers may be even less successful quitting than menthol smokers from other populations.^{14,15}

Compared to non-menthol, menthol cigarettes are associated with moving to regular smoking among youth and young adults.¹¹ People who identify as lesbian, gay, bisexual or transgender (LGBT) who smoke are more likely to smoke menthol cigarettes than heterosexual people who smoke.¹²

WHAT CAN COMMUNITIES DO ABOUT FLAVORED PRODUCTS?

States and localities can adopt sales restrictions to address menthol cigarettes and other flavored tobacco products that appeal to youth. Six states and more than 170 U.S. localities have banned the sale of all flavored tobacco products including menthol cigarettes.¹⁶ Limiting the sale of products, setting a minimum price or creating a minimum pack size are some of the ways communities can protect their youth by making flavored tobacco products less accessible and less appealing.¹⁷

Despite a 2020 FDA ruling banning the sale of certain pod-based flavored vape products, thousands of flavored vape products were left on the market, including all disposable vapes, the most popular device type used by young people.

The public is waiting for the FDA to act on its April 2022 proposed rule to ban menthol in cigarettes and cigars. While this is a much-needed step for curbing tobacco use, the final ruling will likely take years, and leaves out all other menthol flavored tobacco products.



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last updated:
April 2023

ANSR is dedicated to reducing the human and economic costs of commercial tobacco, nicotine and other drug use in Minnesota.



**BEAUTIFUL LIE
UGLY TRUTH**
ABOUT MENTHOL TOBACCO
BeautifulLieUglyTruth.org

This publication is made possible by funding from the Minnesota Department of Health's Commercial Tobacco-Free Communities Grant Program.

Flavors with Menthol Factsheet Citations

Updated January 28, 2020

- Flavored tobacco products include cigarettes, cigars, chewing tobacco, blunt wraps, electronic cigarettes and shisha, the tobacco used in hookah. These products help the tobacco industry get around the FDA's 2009 ban of cigarettes with flavors other than menthol. (1)
- JUUL, the most popular e-cigarette on the market, resembles a USB flash drive. These devices deliver a high dose of nicotine with a modern design that is easy to conceal. (2)
- The same flavorings used in tobacco products are also used in candy and Kool-Aid drink mixes. (3)
- Menthol flavored tobacco is easier to start and harder to quit. (4)
- The tobacco industry uses flavored tobacco to attract the next generation of smokers. (5)
- Young people are much more likely to use flavored tobacco products than adults. (6)
- In fact, 80 percent of youth who use tobacco use fruit, candy or menthol flavored tobacco. (7)
- Studies show that young people perceive flavored tobacco products as tasting better and being safer than unflavored products, even though they are just as dangerous and addictive. (8)
- Tobacco industry documents show targeted efforts to market menthol products to African Americans, LGBTQ communities and youth. (9, 10)
- Menthol makes tobacco easier to start smoking and harder to quit. (4)
- 88 percent of African American adults who smoke use menthol, compared to 25 percent of adult smokers overall. (11)
- Menthol smoking significantly reduces quitting success among African American smokers. (12)
- In Minnesota, 34 percent of teen smokers smoke menthol. (13)
- Nationally, 70 percent of LGBTQ youth smokers smoke menthol. (14)

Sources:

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Flavors with Menthol Factsheet Citations

Updated January 28, 2020

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BILL NO. _____

**AN ORDINANCE AMENDMENT MODIFYING SECTION 1146 OF THE RICHFIELD CITY
CODE IN RELATION TO FLAVORED PRODUCTS**

THE CITY OF RICHFIELD DOES ORDAIN:

1146.01. Findings and Purpose.

Subdivision 1. The Richfield City Council makes the following Findings in support of this section intended to regulate the sale, ~~possession~~, and use of tobacco, ~~tobacco-and~~ related devices, electronic delivery devices, and nicotine or lobelia delivery products and to protect young people against the serious effects associated with the use of ~~tobacco-and-related-devices-andthose~~ products:

- (a) The City Council recognizes that the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 18-21 violates both state and federal laws;
- (b) Studies, which the city hereby accepts and adopts, have shown that 95 percent of smokers initiate use before the age of 21; and that almost no one starts smoking after age 25;
- (c) Tobacco use has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government;
- (d) Raising the minimum legal ~~purchasing-sales~~ age to 21 will take legal purchasers out of the social circles of underage users. ~~Sand~~ studies have concluded that raising the minimum legal ~~purchasing-sales~~ age for tobacco to 21 would result in a 12 percent decrease in tobacco use and approximately 223,000 fewer premature deaths for those born between 2000 and 2009;
- (e) Raising the minimum legal ~~purchasing-sales~~ age to 21 is in line with the minimum age to buy alcohol and simplifies ID checks for retailers;
- (f) There is evidence to suggest that enforcement of possession, use, or purchase (PUP) laws against youth detract from the enforcement of penalties against retailers and that youth of color in Minnesota are disproportionately over-represented in similar status-level offenses, increasing their interactions with law enforcement and the juvenile justice systems;
- (g) Enforcement of PUP laws has not been shown to reduce youth smoking significantly and because PUP laws do not sufficiently take into account the tobacco industry's responsibility for targeting youth with its marketing practices, this section is intended to regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect minors and young adults against the serious effects associated with use and initiation, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in Minn. Stat. § 144.391, as it may be amended from time to time;
- (h) 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
- (i) Studies show that youth and young adults are especially susceptible to commercial tobacco product availability, advertising, and price promotions at tobacco retail environments;
- (j) Commercial tobacco use causes disease and death and constitutes an urgent public health threat as it remains the leading cause of preventable death and disability in the United States, with 480,000 people dying prematurely in the United States from smoking-related diseases

every year. In the United States, smoking is responsible for about one in every five deaths, more deaths each year than human immunodeficiency virus (HIV), illegal drug use, alcohol use, motor vehicle injuries, microbial agents, and toxic agents combined;

- (k) Commercial tobacco use can affect nearly all organ systems and is responsible for 87 percent of lung cancer deaths, 79 percent of all chronic obstructive pulmonary disease deaths, and 32 percent of coronary heart disease deaths. According to the World Health Organization, tobacco use accounts for the greatest cause of death worldwide, responsible for nearly 6 million deaths per year. Over 16 million Americans have at least one disease caused by smoking;
- (l) Secondhand smoke, according to the Centers for Disease Control and Prevention, causes stroke, lung cancer, and coronary heart disease in adults. In addition, it increases risks for sudden infant death syndrome, respiratory symptoms, middle-ear disease, and slows lung growth in children.
- (m) Cigarette butts are the most-littered object in the world and the item most often found in beach cleanups globally. Butts contribute nonbiodegradable plastic, nicotine, heavy metals, pesticides, and other toxic substances to land and marine environments, down to the bottom of the oceans;
- (n) The tobacco industry has been adjudicated as racketeers in federal court as a result of its collective and coordinated denial, deceit, and targeting of deadly, addictive products to structurally marginalized communities.

Subd. 2. Studies. In making these findings, the City Council accepts the conclusions and recommendations of: the Institute of Medicine's report, "Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products" (2015), 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," "Best Practices for Comprehensive Tobacco Control Programs, 2014," and "Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997"; and of the following scholars in these scientific journals: Xin Xu et al., Annual Healthcare Spending Attributable to Cigarette Smoking: An Update, *Am. J. Prev. Med.* 48(3): 326-33 (Mar. 2015); Giovino GA, "Epidemiology of Tobacco Use in the United States," *Oncogene* (2002) 21, 7326-40; Khuder SA, et al., "Age at Smoking Onset and its Effect on Smoking Cessation," *Addictive Behavior* 24(5):673-7, September-October 1999; D'Avanzo B, et al., "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; Everett SA, et al., "Initiation of Cigarette Smoking and Subsequent Smoking Behavior Among U.S. High School Students," *Preventive Medicine*, 29(5):327-33, November 1999, ~~copies of which are adopted by reference~~; Wakefield, M & Giovino, G "Teen Penalties for Tobacco Possession, Use, and Purchase: Evidence and Issues," *Tobacco Control* (2003)12, i6-i13; the Minnesota Juvenile Justice Advisory Committee's report, "2016 Annual report to Governor Mark Dayton and the Minnesota State Legislature (2016); 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; Andrea C. Villanti et al., Flavored Tobacco Product Use in Youth and Adults: Findings from the First Wave of the PATH Study (2013–2014), 53 Am. J. Prev. Med. 139 (2017), <https://www.ncbi.nlm.nih.gov/pubmed/28318902>; Shari P. Feirman et al., Flavored Tobacco Products in the United States: A Systematic Review Assessing Use and Attitudes, 18 Nicotine Tobacco Res. 739 (2015); copies of which are adopted by reference.- (Amended, Bill No. 2013-19; Bill No. 2018-6)

1146.03. Definitions.

Subdivision 1. For the purposes of this section, the terms defined in this subsection have the following meanings given them:

Subd. 2. Tobacco. "Tobacco" means ~~cigarettes and~~ 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; pipe tobacco; 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; dipping tobaccos; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco. This term Tobacco 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. excludes any tobacco product that has been approved by the United States 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. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 3. Tobacco-related devices. "Tobacco-related devices" shall mean pipes, ~~cigarette~~-rolling papers, wraps, or other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or inhalation of vapors of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately. Tobacco-related devices may or may not contain tobacco. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 4. ~~Tobacco-related~~Licensed product. The term that collectively refers to Aany tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product, as those terms are defined in this section. (Added, Bill No. 2018-6)

Subd. 5. Self-service merchandising. "Self-service merchandising" shall mean open displays of ~~tobacco, tobacco products, tobacco-related devices, electronic delivery devices or nicotine or lobelia delivery~~licensed products in any manner where any person has access to ~~such items~~the licensed products without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention entails the actual physical exchange of the ~~tobacco, tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery~~licensed product, between the customer and the licensee or employee. Self-service merchandising shall not include vending machines. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 6. Vending machine. "Vending machine" shall mean any mechanical, electric or electronic, or other type of device which dispenses ~~tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery~~licensed products, upon the insertion of money, tokens, or other form of payment ~~directly~~ into or onto the machine by the person seeking to purchase such items. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 7. Loosies. "Loosies" shall mean the common term used to refer to single cigarettes, cigars, and any other licensed products that have been removed from their original retail packaging and offered for sale. Loosies does not include premium cigars that are hand-constructed, have a wrapper made entirely from whole tobacco leaf, and have a filler and binder made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor. a single or individually packaged cigarette. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 8. Retail establishment. "Retail establishment" shall mean any place of business where ~~tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery~~licensed products, are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, tobacco product shops, liquor stores, convenience stores, gasoline service stations, bars, and restaurants. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 9. Moveable place of business. "Moveable place of business" shall mean any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and that is not a fixed address or other permanent type of structure licensed for over-the-counter sales transactions ~~motorized vehicles, mobile sales kiosks, kiosks, trailers or other structure or equipment not permanently attached to the ground.~~ (Amended, Bill No. 2013-19)

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

Subd. 11. Compliance checks. "Compliance checks" shall mean the system the City of Richfield uses to investigate and ensure that those authorized to sell ~~tobacco, tobacco products, tobacco-related devices, electronic delivery devices, and nicotine and lobelia~~licensed delivery products, are following and complying with the requirements of this section. Compliance checks shall involve the use of persons under the age of 21 as authorized by this section to attempt to purchase such items. Compliance checks may also be conducted by other units of government for educational, research and training purposes or for the purpose of enforcing appropriate Federal, State or local laws and regulations relating to ~~tobacco, tobacco products, tobacco-related devices, electronic delivery devices, and nicotine and lobelia~~licensed products. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 12. Electronic delivery device. "Electronic delivery device" shall mean any product or electronic device that can be used to deliver nicotine, lobelia or any other substance, ~~whether natural or synthetic, intended for human consumption through the inhalation of aerosol or vapor from the product to the person inhaling from the device. 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. The term shall include such devices whether they are manufactured, marketed, or sold as electronic delivery devices, electronic cigars, electronic pipes, vape pens, mods, tank systems, or under any other product name or descriptor and includes any component part of such a product whether or not 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. This term excludes any product that has been approved by the United States 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.~~ (Added, Bill No. 2013-19; amended, Bill No. 2015-13; Bill No. 2018-6)

Subd. 13. Cigar. A "cigar" shall mean any roll of tobacco that is wrapped in tobacco leaf or in any substance containing tobacco, with or without a tip or mouthpiece, that is not a cigarette as defined in Minn. Stat. § 297F.01, subdivision 3 as amended from time to time. (Added, Bill No. 2015-13)

Subd. 14. Smoking. "Smoking" shall mean 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, inhaling or exhaling from, or carrying, any lighted or heated tobacco, tobacco product, tobacco-related device or any other lighted or heated product, whether natural, synthetic, containing, made or derived from nicotine, tobacco marijuana or other plant. Smoking also includes the inhaling or exhaling of vapor from any electronic delivery device or nicotine or lobelia delivery product, as well as carrying such device or product that is turned on or otherwise activated. (Added, Bill No. 2015-13; amended, Bill No. 2018-6)

Subd. 15. Place of Employment. "Place of employment" shall mean any indoor area at which two or more individuals perform any type of service for consideration of payment under any type of contractual relationship, including, but not limited to, an employment relationship with or for a private corporation, partnership, individual, or government agency. Place of employment includes any indoor area where two or more individuals gratuitously perform services for which individuals are ordinarily paid. A place of employment includes, but is not limited to, public conveyances, factories, warehouses, offices, retail stores, restaurants, bars, banquet facilities, theaters, food stores, banks, financial institutions, employee cafeterias, lounges, auditoriums, gymnasiums, restrooms, elevators, hallways, museums, libraries, bowling establishments, employee medical facilities, and rooms or areas containing photocopying equipment or other office equipment used in common. Vehicles used in whole or in part for work purposes are places of employment during hours of operation if more than one person is present. An area in which work is performed in a private residence is a place of employment during hours of operation if:

- (1) The homeowner uses the area exclusively and regularly as a principal place of business and has one or more on-site employees; or
- (2) The homeowner uses the area exclusively and regularly as a place to meet or deal with patients, clients, or customers in the normal course of the homeowner's trade or business.

(Added, Bill No. 2015-13)

Subd. 16. Public Meeting. "Public meeting" shall mean any meeting open to the public pursuant to Minn. Stat. § 13D.01. (Added, Bill No. 2015-13)

Subd. 17. Public Place. "Public place" shall mean any enclosed, indoor area used by the general public, including, but not limited to, restaurants; bars; any other food or liquor establishment; retail and other commercial establishments; educational ~~facilities~~facilities; hospitals; nursing homes; auditoriums; arenas; meeting rooms; waiting rooms; and common areas of rental apartment buildings. (Added, Bill No. 2015-13)

Subd. 18. Sampling. "Sampling" shall mean the lighting of tobacco, tobacco products, tobacco-related devices or the activation of and inhaling of vapor from electronic delivery devices or nicotine or lobelia delivery products in a retail establishment by a customer or potential customer for the purpose of sampling the product or device before a purchase. (Added, Bill No. 2015-13; amended, Bill No. 2018-6)

Subd. 19. Nicotine or lobelia delivery product. Any product containing or delivering nicotine or lobelia intended for human consumption, whether natural or synthetic, 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 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.~~any product that has been approved or otherwise verified for legal sale by the United States Food and Drug Administration for tobacco use cessation or for other medical purposes, and is being marketed and sold solely for that approved purpose.~~ (Added, Bill No. 2018-6)

Subd. 20. 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.

Subd. 21. 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.

Subd. 22. 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.

1146.05. Sale and distribution of tobacco.

Subdivision 1. License required. No person or establishment shall sell or offer to sell any ~~tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery~~ licensed products without first having obtained a license to do so from the City of Richfield. All licenses issued under this section shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 2. Application. An application for a license to sell ~~tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery~~ licensed products shall be made on a

form provided by the Public Safety Director or the Public Safety Director's designee. The fee shall accompany the application. The application shall be reviewed and action taken on it by either the Public Safety Director or the Director's designee. ~~(Amended, Bill No. 2013-19; Bill No. 2018-6)~~

Subd. 3. Action. The Public Safety Director or the Public Safety Director's designee may either approve or deny the license, or may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the Public Safety Director or the Public Safety Director's designee denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the decision.

Subd. 4. License term. All licenses shall expire on December 31 of the year in which the license is issued. The annual license fee will not be prorated.

Subd. 5. Denial, revocation or suspension.

- (a) A license under this section may be denied, suspended, or revoked by the council, after an investigation and public hearing where the licensee is granted the opportunity to be heard, for ~~one (1) or more any~~ of, but not limited to, the following reasons:
- (1) ~~(a)~~ The operation of the business is in conflict with any provision of this code.
 - (2) ~~(b)~~ The operation of the business is in conflict with any health, fire, building, building maintenance, zoning, or any other applicable codes or laws.
 - (3) ~~(c)~~ The applicant or licensee has failed to comply with one (1) or more provisions of this section or any statute, rule or ordinance pertaining to the sale of ~~tobacco, tobacco products, tobacco-related device, electronic delivery devices or nicotine or lobelia delivery~~ licensed products.
 - (4) ~~(d)~~ The applicant has committed fraud, misrepresentation or bribery in securing or renewing a license.
 - (5) ~~(e)~~ The owner of the premises licensed or to be licensed would not qualify for a license under the terms of this section.
 - (6) ~~(f)~~ The applicant is under the age of 21 years.
 - (7) ~~(g)~~ The applicant 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 ~~tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery~~ licensed products.
 - (8) ~~(h)~~ The applicant has had a license to sell ~~tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery~~ licensed products, revoked within the 12 months preceding the date of application.
 - (9) (i) The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license. (Amended, Bill No. 2013-19; Bill No. 2018-6)
- (b) If a license is mistakenly issued or renewed to a person, the city will revoke the license 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.

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

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

Subd. 8. Renewals. The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but no more than 60 days before the expiration of the current license.

Subd. 9. Employee training. The applicant for license renewal must provide proof that an employee training program on ~~tobacco~~ sales of licensed products has been provided during the license year by submitting records supporting that training at the time of their license renewal each year. (Amended, Bill No. 2004-9)

Subd. 10. Maximum number of licenses. The maximum number of licenses issued by the city at any time is limited to four. When the maximum number of licenses has been issued, the city will place persons seeking licensure on a waiting list and allow them to apply on a first-come, first-served basis, when an existing license is not renewed or is revoked. A new applicant who has purchased a business location holding a valid city license will be first on the waiting list, provided the new applicant meets all other application requirements in accordance with this ordinance. Retail establishments holding a valid license on [insert date] will not be affected by this limitation but will be eligible to have such licenses renewed for the same location and licensee provided:

The retail establishment maintains a valid license by complying with the provisions of this ordinance;

(a)

(b) The establishment or location is in compliance with all other requirements of law and there exist no grounds for adverse actions against such licenses;

(c) The previous license has not terminated or expired more than one (1) year before the new license had been first applied for; and,

(d) A previous license has not been revoked.

Subd. 11. 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.

1146.07. License fee.

The annual license fee for a tobacco license is set by appendix D. The license fee must be paid at the time of application for the license.

1146.09. Prohibitions.

Subdivision 1. Prohibited sales. It shall be a violation of this section for any person to sell or offer to sell any ~~tobacco, tobacco product, tobacco-related device, electronic delivery device or nicotine or lobelia delivery~~ licensed product:

(a) To any person under the age of 21 years.

(i) Age verification. Licensees must verify by means of government-issued photographic identification containing the bearer's date of birth 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.

(ii) Signage. Notice of the minimum legal sales age, and age verification requirement, and possible penalties for underage sales must be posted 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.

(b) By anyone under the age of 18 years.

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

~~(d) — By means of self-service merchandising.~~

~~(de)~~ By means of loosies.

~~(ef)~~ 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.

~~(fg)~~ By any other means prohibited by Federal, State, or other local law, ordinance provision, or other regulation. (Amended, Bill No. 2018-6)

Subd. 2. Child-resistant packaging. The sale of any liquid, whether or not such liquid contains nicotine, that is intended for human consumption and used in an electronic delivery device or nicotine or lobelia delivery product that is not contained in child-resistant packaging, is prohibited. All licensees under this Section must ensure that any such liquid is sold in child-resistant packaging, as defined in Minn. Stat. § 461.20, as amended from time to time. (Amended, Bill No. 2018-6)

Subd. 3. Cigar sales. No person shall sell, offer for sale, or otherwise distribute cigars in original packages containing three (3) or fewer cigars for a sale price, after any coupons, multipack or buy-one-get-one promotions, or any other discounts are applied and prior to applicable sales taxes being imposed, of less than two dollars and sixty cents (\$2.60) per cigar contained within. In addition, no person shall sell, offer for sale, or otherwise distribute cigars in original packages of four (4) or more cigars for a sale price, after any coupons, multipack or buy-one-get-one promotions, or any other discounts are applied and prior to applicable sales taxes being imposed, of less than ten dollars and forty cents (\$10.40) per package. This subdivision does not apply to premium cigars as defined in Minn. Stat. § 297F.01, subdivision 13a. This subdivision shall become effective January 1, 2016.

Subd. 4. Smoking and sampling 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. ~~Smoking shall be prohibited, and no person shall smoke, in a public place, at a public meeting, or in a place of employment. This subdivision also prohibits the sampling of tobacco, tobacco products, electronic delivery devices, nicotine or lobelia delivery products and products used in electronic delivery devices and nicotine or lobelia delivery products. A licensee under this Section that allowed sampling at its licensed premises on or before October 23, 2014, may continue to allow sampling, but only while that certain licensee operates at that certain licensed premises. (Amended, Bill No. 2018-6)~~

Subd. 5. Samples prohibited. No person shall distribute samples of any licensed product free of charge or at a nominal cost. The distribution of licensed products as a free donation is prohibited. ~~Smoking permitted. Except sampling, which is expressly prohibited under subd. 4, smoking is permitted as identified in Minn. Stat. § 144.4167.~~

Subd. 6. Flavored products. No person shall sell or offer for sale any flavored products.
(Amended, Bill No. 2013-19; Bill No. 2015-13)

1146.11. Vending machines.

~~It shall be unlawful for any person licensed under this section to allow the sale of tobacco, tobacco products, tobacco-related devices, electronic delivery devices or nicotine or lobelia delivery products, by the means of a vending machine. (Amended, Bill No. 2013-19; Bill No. 2018-6)~~

1146.13. Self-service sales.

It shall be unlawful for a licensee under this section to allow the sale of ~~tobacco, tobacco products, tobacco-related devices, electronic delivery devices or nicotine or lobelia delivery~~ licensed products, by

any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the item, between the licensee or licensee's employee and the customer. All ~~tobacco, tobacco products, tobacco-related devices, electronic delivery devices or nicotine or lobelia delivery licensed~~ products, shall either be stored behind a counter or other area not freely accessible to customers. A license holder who operates an establishment or fully enclosed portion of an establishment that sells at least 90 percent of its products in ~~tobacco, or tobacco products, tobacco-related devices, electronic delivery devices or nicotine or lobelia delivery licensed~~ products, is exempt from the self-service merchandising provision if the license holder prohibits anyone under 21 years of age from entering the establishment or fully enclosed portion of an establishment and the license holder conspicuously displays a notice prohibiting persons under 21 years of age from entering the establishment. (Amended, Bill No. 2013-19; Bill No. 2018-6)

1146.15. Responsibility.

All licensees under this section shall be responsible for the actions of their employees in regard to the sale, offer to sell, and furnishing of ~~tobacco, tobacco products, tobacco-related devices, electronic delivery devices or nicotine or lobelia delivery licensed~~ products on the licensed premises, and the sale, offer to sell, and furnishing of such an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the City from also subjecting the employee to whatever penalties are appropriate under this section, State or Federal law, or other applicable law or regulation. (Amended, Bill No. 2013-19; Bill No. 2018-6)

1146.17. Compliance checks and inspections.

All licensed premises shall be open to inspection by Richfield law enforcement or other authorized City officials during regular business hours. From time to time, but at least twice per year, the City shall conduct compliance checks. In accordance with state law, the city will conduct a compliance check that involves the participation of a person at least 17 years of age, but under the age of 21 to enter the licensed premises to attempt to purchase licensed products. Prior written consent from a parent or guardian is required for any person under the age of 18 to participate in a compliance check. ~~One check will be conducted by engaging, with the written consent of their parents or guardians, a person over the age of 15 years but less than 17 years of age, to enter the licensed premise to attempt to purchase tobacco, tobacco products, tobacco-related devices, electronic delivery devices or nicotine or lobelia delivery products. A second check will be conducted by engaging a person over the age of 18 but less than 21 years of age, to enter the licensed premise to attempt to purchase such items.~~ Persons used for the purpose of compliance checks shall be supervised by the Public Safety Director or the Public Safety Director's designee. No person used in compliance checks shall attempt to use a false identification misrepresenting the person's age and all persons lawfully engaged in a compliance check shall answer all questions about the person's age, asked by the licensee or licensee's employee and shall produce any identification, if any exists, for which the person is asked. Nothing in this subdivision 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.

(Amended, Bill No. 2013-19; Bill No. 2015-13; Bill No. 2018-6)

1146.19. Other ~~illegal prohibited~~ acts.

Subdivision 1. Unless otherwise provided, the following acts shall be a violation of this section.

Subd. 2. ~~Illegal sales~~ Prohibited furnishing or procurement. It shall be a violation of this section 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 purchase or attempt to purchase any licensed product to sell or otherwise provide any tobacco, tobacco products, tobacco-related devices, electronic delivery devices or nicotine or lobelia delivery products, to any person under the age of 21.~~ (Amended, Bill No. 2018-6)

Subd. 3. Use of false identification. It shall be a violation of this section 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. under the age of 21 to attempt to disguise their true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

(Amended, Bill No. 2013-19; Bill No. 2018-6)

1146.21. Violations.

Subdivision 1. Notice and hearing. Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and that informs the alleged violator of their right to a hearing on the matter and how and where a hearing may be requested, including a contact address and phone number. ~~The alleged violator shall have the opportunity for a hearing before the Director of Public Safety before any penalty is imposed under this section. A decision that a violation has occurred shall be in writing.~~

Subd. 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. ~~Misdemeanor prosecution. Nothing in this subsection shall prohibit the City, from seeking prosecution as a misdemeanor for any alleged violation of this ordinance.~~

Subd. 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.

Subd. 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 Subd. 6 of this subsection.

Subd. 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.

Subd. 6. Appeals. Appeals of any decision made by the hearing officer must be filed in Hennepin County district court within 10 business days of the date of the decision.

Subd. 73. Continued violation. Each violation, and every day on which a violation occurs or continues, shall constitute a separate offense.

1146.23. Penalties.

Subdivision 1. Licensees. Any licensee found to have violated this section, or whose employee shall have violated this section, shall be charged an administrative fee as follows:

(a) First violation. ~~\$3200.00~~ fine with no suspension.

- (b) Second violation. If within 3624 months of the first violation, ~~\$-\$6500.00~~ fine with a two-day suspension. If outside of 3624 months of the first violation, it will be counted as a first violation. (Amended, Bill No. 2013-19)
- (c) Third violation. If within 3624 months of the ~~second-first~~ violation, ~~-\$ \$1,000700.00~~ fine with a seven-day suspension. If outside of 3624 months of the second violation, it will be counted as a second violation. (Amended, Bill No. 2013-19)
- (d) Fourth violation. If within 3624 months of the third violation, \$1,000.00 fine ~~with a suspension of up to 60 days, with the option to revoke the license and the license will be revoked.~~ If outside of 3624 months of the third violation, it will be counted as a third violation. ~~When a license is revoked, one (1) year's time must elapse from the date of revocation before the establishment is eligible to reapply for a tobacco license.~~ (Amended, Bill No. 2013-19)
- ~~(e) Step back option. The City's disciplinary penalties include a "step back" option as an incentive for licensed establishments. Under the "step back" option, each time an establishment passes two (2) consecutive compliance checks, the establishment is deemed to have "stepped back" one (1) violation level. For example, if an establishment has had a total of three (3) violations but successfully passes two (2) consecutive compliance checks after the third violation, the establishment "steps back" one (1) level to the second violation level; if a subsequent violation were to occur, the penalty would be imposed as if it were a third violation rather than a fourth violation. Each step back requires two (2) new consecutive successful compliance checks.~~ (Amended, Bill No. 2004-9)
- ~~(f) Council appearance and fine reduction. A licensee must appear before the City Council after a second, third, or fourth violation. Upon such appearance, the Council will reduce the applicable fine by \$100.00. (Added, Bill No. 2013-19)~~
- ~~(fg) Penalty for noncompliance. If a licensee fails to comply with a suspension or revocation notice, the Council may increase the suspension or the fine, or both, at its discretion. (Added, Bill No. 2013-19)~~

Subd. 2. Other individuals. Individuals, other than licensees regulated by subdivision 1 of this subsection ~~and other than persons under the age of 21 regulated under Subd. 3 of this subsection~~, found to be in violation of this section ~~shall may~~ be charged an administrative fee of ~~\$5400.00~~. (Amended, Bill No. 2004-9)

Subd. 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 noncriminal, non-monetary civil penalties or remedies such as tobacco-related education classes, diversion programs, community services, or another non-monetary, civil penalty that the city determines to be appropriate. The City Council will consult with educators, parents, guardians, persons under the age of 21, public health officials, court personnel, and other interested parties to determine an appropriate remedy for persons.~~ ~~Reserved.~~ (Repealed, Bill No. 2018-6)

Subd. 4. Misdemeanor. ~~Nothing in this subsection prohibits the city from seeking prosecution as a misdemeanor for an alleged second violation of this ordinanceSection 1146 by a person 21 years of age or older within five years of a previous conviction under the ordinanceSection 1146. Nothing in this subsection shall prohibit the City from seeking prosecution as a misdemeanor for any violation of this section.~~

1146.25. Exceptions and defenses.

Subdivision 1. Nothing in this section shall prevent the provision of tobacco, ~~tobacco products,~~ tobacco-related devices, ~~electronic delivery devices, or nicotine or lobelia delivery products~~ to a person under the age of 21 as part of an Indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 2. It shall be an affirmative defense to the violation of this section for a person to have reasonably relied on proof of age as described by State law.

~~**Subd. 3.** It shall be a defense to a violation of the section that a licensee did not intentionally aid, advise, hire, counsel or conspire with another to sell tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to persons under the age of 21 or otherwise procure the sale of such items to persons under the age of 21.~~

1146.27. Severability and savings clause.

If any section or portion of this section shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation or effect the validity and enforceability of any other section or provision of this section.

1146.28 Effective Date.

This Ordinance is effective in accordance with Section 3.09 of the Richfield City Charter.

Passed by the City Council of the City of Richfield, Minnesota this ____ day of _____ , 2023.

Mary B. Supple, Mayor

ATTEST:

City Clerk



STAFF REPORT NO. 92
CITY COUNCIL MEETING
7/25/2023

REPORT PREPARED BY: Chris Swanson, Management Analyst

DEPARTMENT DIRECTOR REVIEW:

OTHER DEPARTMENT REVIEW: Amy Markle

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
7/19/2023

ITEM FOR COUNCIL CONSIDERATION:

Consider the approval of a Resolution Approving 2023 State Legislation for a Local Option Sales Tax in Richfield.

EXECUTIVE SUMMARY:

Richfield is an older community with a modest tax base. The city has an immediate need to continue making investments to ensure community amenities are available for residents in the future. Last year, a local sales tax (LST) was identified as a potential funding source for three major projects including the Wood Lake Nature Center; Veterans Park Complex; and the Richfield Community Center project. Approval of these projects will support athletics, recreation, and wellbeing in Richfield.

On January 24, 2023, the City Council approved Resolution No. 12067, directing staff to submit a request to the Minnesota Legislature to propose a one-half of one percent (0.5%) LST on the gross receipts from retail sales in Richfield. That comes out to roughly a 5-cent tax on a \$10 purchase. The city estimates a LST of 0.5% would generate approximately \$3.5-6.7M million annually over 20 years for estimated total sales tax revenues of approximately \$98 million. Based on these estimates, each Richfield resident would have paid, on average, an additional \$30.77 in sales tax in 2019.

In 2023, the Minnesota Legislature approved Minnesota Laws 2023, Chapter 64, Article 10, Section 44, as introduced by the Legislature. This law gives the city, with approval from the voters, the authority to impose a LST under the special law. The proceeds of this LST must be used to pay the capital and associated interest and financing costs for Wood Lake Nature Center; Veterans Park Complex; and the Richfield Community Center project.

Based on direction from legislative staff and the City Attorney, the city plans to bring the proposed tax to the voters for approval at the November 2024 general election. If approved by the voters, the authorized LST will expire either 20 years after the tax is first imposed or when the City Council determines that the amount received from the tax is sufficient to pay for the projected costs.

If the Council approves this action, the signed resolution and the required certificate will be sent to the Minnesota Secretary of State. The next steps in this process will be to set the ballot language for the referendum, Staff will bring proposed language to Council at a future meeting.

As noted above, the city plans to bring the proposed tax to the voters for approval at the November 2024 general election. At the referendum, voters will have the opportunity to vote to fund each project. If the voters approve the referendum, the city must pass an ordinance adopting the LST for each project approved.

RECOMMENDED ACTION:

Adopt a Resolution approving the 2023 State Legislation for a Local Sales Tax in Richfield and directing staff to submit the final signed resolution and the required certificate to the Minnesota Secretary of State.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

The City Council discussed a LST at both the December 8, 2022 and January 10, 2023 work sessions, and formally approved a resolution on January 25, 2023, seeking authority from the Legislature. Additionally, authority for a LST for Richfield is included in the city's 2023 Legislative priorities.

At the January 10, 2023 work sessions staff explained the process to implement a LST, and the potential financial impact. Council then prioritized those projects that qualified to be funded with a tax.

Prior to the work sessions the City contracted with the University of Minnesota's Extension Center for Community Vitality to perform a LST analysis for Richfield. The Extension Center is a leader in this field of study, providing analyses for many neighboring communities including: Maple Grove, St. Louis Park, Oakdale, Bloomington, and Edina. This LST analysis provided information on future revenue and the community impact of a 0.5% LST in Richfield.

This LST study evaluated several factors and provides:

- A projection for estimated taxable sales in the community.
- An estimated taxable sales generated by non-residents.
- Analysis of the City's sales tax sector distribution.
- A summary of the taxable retail and service sales by comparable communities for subsequent years once a local option sales tax was implemented.
- An estimate for the total revenue per year from a LST in Richfield.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

State statute guides this process. As the law reads now, the ballot must contain a separate question for each proposed project with a maximum of five projects. Only projects that receive a majority "yes" vote will be funded with the proposed tax.

If there are projects not approved by the voters, the total revenue raised, and the duration of the tax must be reduced by an amount proportional to the cost and timeframe of the failed initiative.

Minn. Stat. § 297A.99 defines a "capital project" or "project" as:

- A single building or structure including associated infrastructure needed to safely access or use the building or structure;
- Improvements within a single park or named recreation area;
- A contiguous trail.

Per state statute, A special law shall not be effective without approval of the local governing body. Approval shall be by resolution adopted by a majority vote of all members of the governing body. The City Council is requested to approve special legislation, Minnesota Laws 2023, Chapter 64, Article 10, Section 44, as introduced by the Legislature. This section authorizes the city to impose by ordinance a LST of 0.5% if approved by the voters at an election as required under Minnesota Statutes § 297A.99, subdivision 3.

The revenues derived from the LST, if approved by the voters, will be used by the City to pay the costs

of collecting and administering the tax and paying for the following projects in the City, including securing and paying debt service on bonds issued to finance all or part of the following projects including: (1) \$11 million, plus interest and financing costs for new construction of the Wood Lake Nature Center; (2) \$9 million, plus interest and financing costs for rehabilitation Veterans Park Complex; and (3) \$45 million, plus interest and financing costs for new construction of the Richfield Community Center.

Minnesota Statutes, Chapter 475, authorizes the City is to issue bonds to finance all or a portion of the costs of the projects approved by the voters. The aggregate principal amount of bonds may not exceed (1) \$11 million, plus interest and financing costs for new construction of the Wood Lake Nature Center; (2) \$9 million, plus interest and financing costs for rehabilitation Veterans Park Complex; and (3) \$45 million, plus interest and financing costs for new construction of the Richfield Community Center, plus an amount to be applied to the payment of the costs of issuing the bonds. The anticipated total project costs to be financed with a LST are estimated at \$65 million. Total debt service on the bonds to be issued, including interest and financing costs over 20 years, shall not be over \$98 million. The bonds are not included in computing any debt limitation applicable to Richfield, and any levy of taxes under Minnesota Statutes § 475.61 to pay principal and interest on the bonds is not subject to any levy limitation. A separate election to approve the bonds under Minnesota Statutes § 475.58, is not required.

C. CRITICAL TIMING ISSUES:

The Council must act on the special legislation within two years. It's recommended the Council approve the law so the city can begin providing educational information to the community on the impact of a LST.

D. FINANCIAL IMPACT:

A LST would place a tax on certain product sales or services within the municipality. All goods or services that are otherwise exempt from taxation are exempt from LST. The Legislature approved a 0.5% (one-half percent) for up to 20 years LST for Richfield. Current projections for a Richfield 0.5% sales tax over a 20-year period total about \$98M.

By enacting a LST, about half the burden of funding these projects would move to nonresidents. The analysis estimates the non-residents portion of revenue would account for 54.5% of taxable sales in Richfield subject to a LST. If a 0.5% LST was in place in 2019, Richfield would have collected an additional \$2.5M in tax proceeds that year. Of that amount, nonresidents would have contributed a majority of the revenue, roughly \$1.35M, while Richfield residents would have contributed \$1.14M. Based on these estimates, each Richfield resident would have paid, on average, an additional \$30.77 in sales tax in 2019. Also of note, every city that surrounds Richfield has in place or is seeking a LST.

Since the LST report from the extension office was completed, the Minnesota Department of Revenue released final 2020 taxable sales number. In 2020, total taxable sales in Richfield were \$808 million. Based on Department of Revenue estimates, its estimated that approximately \$560 million would have been subject to a tax in 2020. A 0.5% LST rate would have generated an annual amount of around \$2.8 million dollars if in place in 2020.

E. LEGAL CONSIDERATION:

Legal counsel has reviewed the proposed resolution.

ALTERNATIVE RECOMMENDATION(S):

The Council must take action on the law within two years. Council could defer the approval of the motion tonight, that would reduce the opportunity for the city to provide effective education to our residents.

PRINCIPAL PARTIES EXPECTED AT MEETING:

ATTACHMENTS:

Description	Type
❑ Resolution Approving LST Special Legislation	Resolution Letter
❑ RENEWING RICHFIELD PARKS It's in our nature	Backup Material

CITY OF RICHFIELD, MINNESOTA

RESOLUTION NO. _____

**APPROVING LAWS OF MINNESOTA 2023, CHAPTER 64,
ARTICLE 10, SECTION 44 RELATING TO A LOCAL
SALES TAX**

WHEREAS, the Legislature of the State of Minnesota passed a special law granting the City of Richfield, Minnesota (the “City”) the authority to impose, by ordinance, a sales and use tax of one-half of one percent to pay the costs of collecting and administering the tax and paying for certain projects in the city, including securing and paying debt service on bonds issued to finance all or part of the following regional projects:

(1) \$11,000,000 plus associated bonding costs for construction of the Wood Lake Nature Center building;

(2) \$9,000,000 plus associated bonding costs for construction of the Veterans Park Complex; and

(3) \$45,000,000 plus associated bonding costs for construction of the Richfield Community Center Project;

all as provided in Laws of Minnesota 2023, Chapter 64, Article 10, Section 44 (the “Special Law”); and

WHEREAS, pursuant to the Special Law, the authority of the City to impose the tax under the Special Law expires at the earlier of (1) 20 years after being first imposed, or (2) when the City Council determines that the amount received from the tax is sufficient to pay for the project costs authorized under the Special Law for projects approved by voters, plus an amount sufficient to pay the costs related to issuance of any bonds authorized under the Special Law, including interest on the bonds; and

WHEREAS, pursuant to the Special Law, the authority of the City to impose the tax under the Special Law may also expire at an earlier time if the City so determines by ordinance; and

WHEREAS, pursuant to the Special Law, and Minnesota Statutes, Section 645.021, subdivisions 2 and 3, the Special Law is effective upon approval by a majority vote of the governing body of the City and the filing of a certificate, including a copy of this resolution, in the form prescribed by the Minnesota Attorney General with the Minnesota Secretary of State; and

WHEREAS, the City Council of the City has determined that it is in the best interest of the City and its residents to approve the Special Law.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RICHFIELD, MINNESOTA AS FOLLOWS:

1. The Special Law is approved.
2. The City Clerk, as the chief clerical officer of the City, is hereby authorized and directed to file the certificate and a copy of this resolution, as approved, with the Minnesota Secretary of State as required by Minnesota Statutes, Section 645.021, subdivision 3.
3. City staff are authorized and directed to take any additional action necessary to implement the Special Law.

The foregoing resolution was moved by Councilmember _____ and seconded by Councilmember _____.

The following voted in the affirmative: _____

The following voted against: _____

Councilmember _____ was absent.

Adopted by the City Council of the City of Richfield, Minnesota, this 25th day of July 2023.

Mary Supple, Mayor

ATTEST:

Dustin Leslie, City Clerk

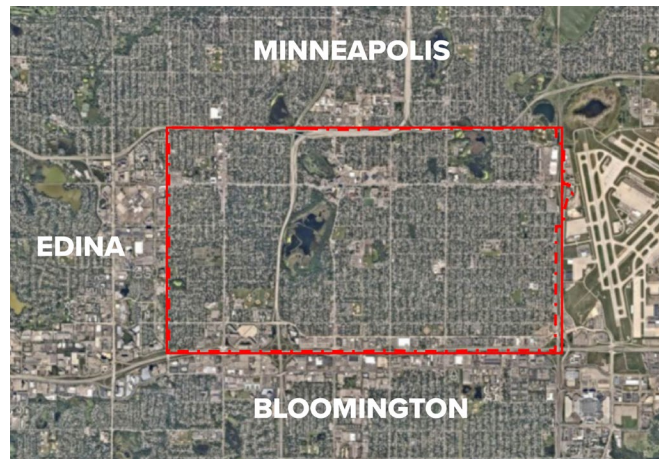
RENEWING RICHFIELD PARKS

It's in our nature.



Our Goal

The City of Richfield, located in Hennepin County, is a first-ring suburb of Minneapolis. Richfield reflects the characteristics of living in a close-knit community while enjoying the amenities and resources of a broader metropolitan area. Richfield is bordered by the cities of Minneapolis, Bloomington, Edina, the Minneapolis-Saint Paul International Airport and the Unorganized Territory of Fort Snelling. The city is home to approximately 36,994 residents and 16,858 jobs.



Due to Richfield's location near other major cities, along with its size and orientation, many non-residents travel to or through the city on a daily basis. Residents and visitors alike love Richfield. They come to visit Wood Lake Nature Center, swim at the Outdoor Pool, shop at the bustling Farmers Market, participate in discounted Senior Dining at the Community Center or play at the fully-inclusive Augsburg Adventure Playground. There is truly something for everyone in Richfield.

Given the regional popularity of the community's amenities, significant demand is placed on the city's facilities and services. The cost of those added demands are currently shouldered by Richfield residents alone. As a city with a modest tax base, there is not a sufficient revenue source for the renewal of these park and recreation assets. Many of the projects included must be done in the next 5-10 years to continue providing these amenities.

Using a local sales tax to finance a new Wood Lake Nature Center, Veterans Park Complex and Richfield Community Center is an equitable method that reflects the regional benefits of these amenities.





Richfield at a glance

Demographics

- Total population of 36,994: roughly 60% white and 40% people of color.
- Median income is \$74,300, compared to \$85,400 in Hennepin County.
- Of 15,925 households, 62% are owner-occupied, and 38% are renter-occupied.
- 13.6% of residents identify as disabled.
- 1 in 4 households speak a language other than English in the home.

Employment

- More than 15,500 non-residents hold jobs in Richfield (U.S. Census data, 2019).

Transportation

- Richfield boasts a highly accessible location, surrounded by a strong network of highways, transit routes, and trails.
- Guiding principles for transportation planning include: multimodal design, connectivity, sustainability, accessibility and equity.
- The city has been designated as a Silver Level Bicycle Friendly Community.

Retail Sales

- Retail sales for taxable consumer goods totaled over \$560 million in 2020 (U of M Extension).
- Non-residents account for approximately 54.4% of total retail sales (U of M Extension).

Parks and Recreation

- The park system includes 22 parks with a total of 486 acres; 97% of the residents live within a 10-minute walk of parkland (Trust for Public Lands).
- Both Wood Lake Nature Center and Veterans Park each have over 100 acres of beautiful natural greenspace and offer extensive year-round facilities and outdoor recreation programming.
- Other recreational offerings include: an inclusive playground, skatepark, outdoor aquatic center, indoor and outdoor ice skating rinks, ski trails, sport courts and fields and an accessible fishing pier.



Project 1: Wood Lake Nature Center

Project Overview: Wood Lake Nature Center (“WLNC”) is a regionally significant source of environmental education, outdoor access and inspiration for the metro area. Serving as a gateway to nature for residents and visitors, the center welcomes more than 100,000 visitors to the center each year. After 51 years, the building needs replacement. The building is not ADA accessible, is infested with rodents and other wildlife and is no longer able to provide the high level of environmental education and immersion the region expects and deserves. The proposed building is 19,000 square feet with modern classrooms, inviting engagement areas and indoor and outdoor learning spaces. It will be fully ADA compliant. Trail improvements around the nature center will help prevent annual flooding and water damage.

Project Cost: The new WLNC is an estimated \$24 million construction project. We estimate \$11 million will be covered by the sales tax.

Wood Lake’s Regional Significance:

- Approximately 65% of program participants and recreational equipment users are from outside of Richfield.
- More than 22,500 people attend programs and events hosted by the center each year.
- Schools come from across the seven-county region, from communities such as North Minneapolis, St. Paul, and Burnsville, to participate in award-winning environmental education programming.
- Hundreds of volunteers complete over 4,300 annual hours of work, representing communities from across the Twin Cities.





Project 2: Veterans Park Complex

Project Overview: The Veterans Park Complex Project (the “Veterans Complex”) would protect and update aging facilities at the park, the Richfield Ice Arena and Richfield Outdoor Pool. The project includes improvements to the aquatics facility, ice arena, park, trails, band shell, picnic pavilion and mini-golf building. The Veterans Complex also includes the ice arena. Specifically, this project would revitalize the pool, which was installed in 1961 and is burdened with expensive repairs and maintenance, season after season. Additionally, accessibility improvements would be made at the Ice Arena, including the installation of an elevator.

Project Cost: This is an estimated \$9 million project.

Veterans Park Regional Significance:

- 35% of annual pool pass holders are from Minneapolis
- The Richfield Ice Arena hosts dozens of organizations from across the area including the Minnesota Whitecaps (which draw over 1,300 people from across the region for home games), Minneapolis Storm Youth Hockey, Jefferson Youth Hockey, Edina Youth Hockey and the Adult Hockey Association of Minnesota.
- The Richfield Farmers Market hosts attendees and vendors from across the seven-county metropolitan area; often experiencing over 2,000 participants per week!





Project 3: Richfield Community Center

Project Overview: The Richfield Community Center Project (the “Community Center”) is a regionally significant place of community meeting and gathering, continuing education and resident support services in the south metro. Since 1975, the Community Center has been housed in the original county library building which was constructed in 1961. It is an outdated building that requires many upgrades to remain functional. Beyond the needed improvements, the current building only meets a fraction of our community’s needs. There is a significant need for a new building that will better match present demand and future usage at the Community Center. The Community Center is a destination easily accessible via transit or bicycle. The new Richfield Community Center will fit the current and future needs of the regional community and include spaces for people of all ages to gather to be active, learn and foster wellness opportunities.

Project Cost: This is a \$55 million project. It is estimated that \$45 million will be covered by the sales tax.

Community Center Regional Significance:

- The Richfield Community Center serves the last communal lunch program for seniors in Minnesota and includes daily participants from across the region.
- The annual tax preparation assistance program has over 600 participants, and the majority are non-Richfield residents.
- There are daily, weekly, monthly, and seasonal program offerings and events for youth, families, seniors, etc., that include attendees from across the region. Most popular include seasonal art boutiques, Fare for All Food Program, youth art classes, kids dance, adult fitness programs, and holiday classes.





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