



# Osseo City Council

## AGENDA

**WORK SESSION**  
**Monday, April 22, 2019**  
**6:00 p.m., Council Chamber**

---

MAYOR DUANE POPPE

COUNCILMEMBERS: JULIANA HULTSTROM, HAROLD E. JOHNSON, MARK SCHULZ, LARRY STELMACH

---

1. **Call to Order**
2. **Roll Call** (quorum is 3)
3. **Approval of Agenda** (requires unanimous additions)
4. **Discussion Items**
  - A. **Tobacco Ordinance Updates**
  - B. **City Rental Properties Review**
5. **Adjournment**



## City of Osseo City Council Work Session Meeting Item

---

<b>Agenda Item:</b>	<b>Tobacco Ordinance Updates</b>
<b>Meeting Date:</b>	April 22, 2019
<b>Prepared by:</b>	Riley Grams, City Administrator
<b>Attachments:</b>	Draft Tobacco Ordinance Current Tobacco Ordinance

---

**Background:**

Back on the June 25, 2018 Council work session meeting, the City Council reviewed the City's current ordinance regulating tobacco as well as a model policy from the League of MN Cities. At that time, the Council discussed a number of items within the ordinance and specific direction was given to Council to fold into a new draft of the tobacco ordinance. The following direction was given at that work session meeting:

- 1) Use the LMC model ordinance as our initial template.
- 2) Model ordinance definitions are updated and reflected in the new draft.
- 3) Mirror the term of the license to that of our recently updated liquor licenses (July 1 to June 30, annually).
- 4) Allow for pro-rating of licenses for any new licenses (monthly, reflects the same as liquor licenses).
- 5) Removal of the section regarding proximity to youth-oriented facilities.
- 6) Updated penalties to reflect current State Statutes.
- 7) Updated to include e-cigarettes and other electronic/vapor devices.
- 8) Allows for "sampling" (provided it is done in a legal tobacco only type shop) and prohibits smoke lounges.
- 9) Does not include raising the legal tobacco purchase age from 18 to 21.

Updating this ordinance will bring Osseo tobacco ordinance in line with recently updated State Statutes, similar to what we recently updated for the liquor ordinance. City Attorney Mary Tietjen drafting the attached tobacco ordinance, with discussion from City Clerk LeAnn Larson and City Administrator Riley Grams.

The City Council should consider the draft ordinance and provide any direction to Staff on edits or other recommendations. Once the draft is agreed upon by the Council, Staff will send the updated draft ordinance to all current tobacco license holders in the city, and provide a comment/review period. Those locations include:

- 1) Holiday Gas Station
- 2) Princeton Liquors
- 3) Top Ten Liquors
- 4) Sipe Bros.
- 5) Dean's Supermarket

The Council should give some amount of time for those license holders to review the new draft tobacco ordinance, and consider a future Council date to approve the new ordinance. Because we are not changing any fees (at this time), the Council could come back at the May 13 meeting to approve the new tobacco ordinance, or if the Council wanted to provide a little more time for license holders to review the draft ordinance and provide comments, the Council can choose to approve the new ordinance at the May 28 meeting. The new ordinance would then become effective upon publication, but the license renewals have already been sent out for 2019. That means the new ordinance, in terms of actual effectiveness, would begin in 2020.

There are a few more questions that Staff would like the Council to consider and provide direction on:

- 1) The new model ordinance requires that applicants provide proof that an employee training program on tobacco sales as been provided during the license year. ***Should the City include this requirement?***
- 2) The new model ordinance language does not allow a new license to be granted to an applicant if it is located within 2000 feet of another license holder unless that applicant has been selling such products at that location for at least one year before this ordinance is enacted. ***Should the City include this requirement?***
- 3) The recently updated liquor license ordinance included language that allowed for refunds if a license is denied or refunding for other reasons. ***Should the City include similar type language in the tobacco ordinance?***
- 4) The new model ordinance requires that non-premium cigars be sold in packs of 5 or more, and that any being sold in fewer than 5 have a specific price per cigar. This could be viewed as a restriction to private business tobacco sales. ***Should the City include this language in the tobacco ordinance?***
- 5) The City's current ordinance relating to tobacco vending machines (112.07) prohibits such vending machines except under certain conditions. ***Should the City keep this language in the new ordinance or simply prohibit all tobacco vending machines?***
- 6) The City's current ordinance relating to tobacco on school grounds (112.11(F)). ***Should the City keep this language in the new ordinance?***
- 7) This new ordinance does not alter the current fees relating to tobacco licenses. ***Does the City Council want to take the next step and have Staff review the fees associated with tobacco licenses, similar to what we did with the liquor fees?***

The Council should consider the above questions and provide direction to Staff moving forward.

#### **Recommendation/Action Requested:**

Staff recommends the City Council discuss the item and direct Staff accordingly.

#### **Next Step:**

Staff to update the final draft and send to current tobacco license holders for comments.

**ORDINANCE NO. 2019 - \_\_\_\_\_**

**AN ORDINANCE REPEALING CHAPTER 112 OF THE CITY CODE  
RELATING TO TOBACCO REGULATIONS AND REPLACING IT WITH A  
NEW CHAPTER REGULATING THE POSSESSION, SALE AND CONSUMPTION  
OF TOBACCO AND TOBACCO RELATED DEVICES AND PRODUCTS  
WITHIN THE CITY OF OSSEO, MINNESOTA**

**THE CITY COUNCIL OF THE CITY OF OSSEO HEREBY ORDAINS AS FOLLOWS:**

**Section 1.** Chapter 112 of the Osseo City Code is repealed in its entirety.

**Section 2.** The Osseo City Code is amended to add the following new Chapter 112,  
as follows:

**CHAPTER 112: TOBACCO REGULATIONS**

**§ 112.01 PURPOSE AND INTENT.**

Because the city recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess and use tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices, and the sales, possession, and use are violations of both state and federal laws; and because studies, which the city hereby accepts and adopts, have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this chapter intends to regulate the sale, possession and use of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in M.S. § 144.391, as amended from time to time.

**§ 112.02 DEFINITIONS.**

Except as otherwise provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**CIGAR.** 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, subd. 3, as amended from time to time.

**CITY.** The City of Osseo, or its officers, agents, and employees.

**COMPLIANCE CHECKS.** The system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of minors as authorized by this ordinance. Compliance checks shall also mean the use of minors who attempt to purchase tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices for educational, research and training purposes as authorized by state and federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate federal, state or local laws and regulations relating to tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices.

**ELECTRONIC DELIVERY DEVICE AND ELECTRONIC CIGARETTE.** Any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any product that has been approved or certified by the 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 marketed and sold for such an approved purpose.

**HOOKAH.** "Hookah" shall mean a pipe with a long, flexible tube by which the smoke is drawn through a jar of water and thus cooled for the use of tobacco or tobacco related products.

**INDIVIDUALLY-PACKAGED.** The practice of selling any tobacco or tobacco product wrapped individually for sale. Individually-wrapped tobacco and tobacco products shall include but not be limited to single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this definition shall not be considered individually-packaged.

**INDOOR AREA.** All space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

**LOOSIES.** The common term used to refer to a single or individually packaged cigarette or any other tobacco product that has been removed from its packaging and sold individually. The term "loosies" does not include individual cigars with a retail price, before any sales taxes, of more than \$2.00 per cigar.

**MINOR.** Any natural person who has not yet reached the age of 18 years.

**MOVEABLE PLACE OF BUSINESS.** Any form of business operated out of a truck, van, automobile, kiosk, trailer or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

**NICOTINE OR LOBELIA DELIVERY DEVICES.** Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco as defined in this section, not including any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

**PUBLIC PLACE.** 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; hospitals; nursing homes; auditoriums; arenas; meeting rooms; waiting rooms; and common areas of rental apartment buildings.

**RETAIL ESTABLISHMENT.** Any place of business where tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices are available for sale to the general public. The phrase shall include but not be limited to grocery stores, convenience stores, restaurants, and drug stores.

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

**SAMPLING.** The lighting of tobacco, tobacco products, tobacco-related devices or the activation of and inhaling of vapor from electronic cigarettes in a retail establishment by a customer or potential customer for the purpose of sampling the product or device before a purchase.

**SELF-SERVICE MERCHANDISING.** Open displays of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices in any manner where any person shall have access to the tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices, without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device between the customer and the licensee or employee. Self-service sales are interpreted as being any sale where there is not an actual physical exchange of the product between the clerk and the customer.

**SMOKING.** Inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product or exhaling vapor from any electronic delivery device, such as vaping. Smoking also includes carrying a lighted or heated cigar, cigarette, pipe, hookah or any other lighted or heated tobacco or plant product intended for inhalation.

**SMOKING LOUNGE.** A tobacco products shop which allows customers to be seated.

**TOBACCO or TOBACCO RELATED PRODUCTS.** Tobacco and tobacco products includes 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, including by vaping, or any component, part, or accessory of a tobacco product; 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; refuse scraps, clippings, cuttings and sweepings of tobacco; dipping tobaccos; and other kinds and forms of tobacco. Tobacco 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.

**TOBACCO PRODUCTS SHOP.** A retail establishment with an entrance door opening directly to the outside that derives more than ninety percent (90%) of its gross revenue from the sale of tobacco, tobacco related products, tobacco related devices and in which the sale of other products is merely incidental. "Tobacco products shop" does not include a tobacco products department or section of any individual business establishment with any type of food, liquor, or restaurant license.

**TOBACCO-RELATED DEVICES.** Tobacco-related devices include any tobacco product as well as a pipe, rolling papers, ashtray, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking or vaping of tobacco or tobacco products.

**VAPOR LOUNGE.** A vapor products shop which allows customers to be seated.

**VAPOR PRODUCTS SHOP.** A retail establishment with an entrance door opening directly to the outside that derives more than ninety percent (90%) of its gross revenue from the sale of electronic delivery devices, electronic cigarettes and related products and in which the sale of other products is merely incidental. "Vapor products shop" does not include a vapor products department or section of any individual business establishment with any type of food, liquor, or restaurant license.

**VENDING MACHINE.** Any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products or tobacco-related devices upon the insertion of money, tokens or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product or tobacco-related device.

### **§ 112.03 LICENSE.**

(A) *License required.* No person shall sell or offer to sell any tobacco, tobacco products, tobacco-related device, electronic cigarettes, electronic delivery devices or nicotine or lobelia delivery device without first having obtained a license to do so from the city. All licenses issued under this chapter shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid.

(B) *Application.* An application for a license to sell tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices shall be made on a form provided by the city. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of

the business for which the license is sought, and any additional information the city deems necessary. Upon receipt of a completed application, the City Clerk shall forward the application to the City Council for action at its next regularly scheduled City Council meeting. If the City Clerk determines an application incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

(C) *Action.* The City Council may either approve or deny the license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council approves the license, the City Clerk shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the City Council's decision.

(D) *Term.* All licenses issued under this chapter shall be valid from July 1 to June 30.

(E) *Revocation or suspension.* Any license issued under this chapter may be revoked or suspended, subject to the process for violations in § 112.13.

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

(G) *Moveable place of business.* No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible for licensing under this chapter.

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

(I) *Renewals.* The renewal of a license issued under this chapter shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but not more than 60 days before the expiration of the current license. The applicant must provide proof that an employee training program on tobacco sales has been provided during the license year by submitting records supporting that training at the time of their license renewal each year. This is new language (not in the current ordinance) – want to include?

(J) *Issuance as privilege and not a right.* The issuance of a license issued under this chapter represents a privilege and not an absolute right of the applicant and does not entitle the holder to an automatic renewal of the license.

(K) *Proximity to other tobacco retailers.* No license shall be granted pursuant to this section to any person for any retail sales of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices within two thousand feet of any other establishment holding such a license, as measured by the shortest line between the space to be occupied by the proposed licensee and the occupied space of the nearest existing licensee, unless that person has been in the business of selling such products in that location before



the date this section was enacted into law for at least one year. This is new language from the model. Do you want to include it?

#### **§ 112.04 FEES.**

No license shall be issued under this chapter until the appropriate license fee is paid in full. The fee for a license under this chapter shall be established in the city's fee resolution. The fee for licenses granted after the commencement of the license term shall be prorated on a monthly basis.

Do you want to include additional language similar to the liquor ordinance – e.g., refund if a license is denied or refunding for other reasons (death, fire)?

#### **§ 112.05 BASIS FOR DENIAL OF LICENSE.**

(A) Grounds for denying the issuance or renewal of a license under this chapter include but are not limited to the following:

- (1) The applicant is under the age of 18 years.
  - (2) The applicant has been convicted within the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices.
  - (3) The applicant has had a license to sell tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices revoked within the preceding 12 months of the date of application.
  - (4) The applicant fails to provide any information required on the application, or provides false or misleading information.
  - (5) The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a license.
- (B) Except as may otherwise be provided by law, the existence of any particular ground for denial, however, does not mean that the city must deny the license.
- (C) If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery of the ineligibility of the applicant for the license under this chapter.

#### **§ 112.06 PROHIBITIONS.**

(A) *Prohibited Sales.*

It shall be a violation of this chapter for any person to sell or offer to sell any tobacco, tobacco product, tobacco-related device, electronic cigarette, electronic delivery device or nicotine or lobelia delivery device:

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

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

(3) By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the tobacco, tobacco product, tobacco-related device, electronic cigarette, electronic delivery device or nicotine or lobelia delivery device and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, electronic cigarette, electronic delivery device, nicotine or lobelia delivery device between the licensee, or the licensee's employee, and the customer.

(4) By means of loosies.

(5) Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other tobacco products.

(6) By any other means, to any other person, or in any other manner or form prohibited by federal, state or other local law, ordinance provision, or other regulation.

*(B) Smoking Prohibitions; Sampling Allowed.*

(1) Except as allowed in Minn. Stat. § 144.4167, smoking shall be prohibited and no person shall smoke in public places and places of work.

(2) To ensure that tobacco smoke or vapor electronic delivery devices does not enter public places and places of work and that persons entering such places are not exposed involuntarily to smoke or vapor, smoking and the use of electronic delivery devices are prohibited within twenty-five (25) feet of entrances, exits, open windows and ventilation intakes of public places and places of work. This prohibition does not apply to entrances and exits used solely in the event of an emergency and appropriately signed for that purpose.

(3) Pursuant to Minn. Stat. § 144.4167, subd. 4, tobacco sampling, including sampling of electronic delivery devices and products used in electronic delivery devices, is allowed in a tobacco products shop.

*(C) Lounges.*

Smoking lounges, hookah lounges and vapor lounges are prohibited.

*(D) Cigars.*

No person shall sell, offer to sell or distribute cigars in an original package containing fewer than five cigars. This restriction shall not apply to any sales, offer to sell, or distribution of an original package consisting of one, two, three, four, or five cigars, provided that each original package has a retail sales price of at least \$2.60 per cigar and after any price promotions or discounts are taken into account and before the imposition of sales tax, but excluding retail sales tax, and tobacco product shops only accessible to those 18 years or older.

(1) This section shall not apply to premium cigars as defined in Minnesota Statutes 297F.01 subd. 13a.

(2) The minimum pricing established in this chapter shall be adjusted periodically for inflation at least every three years. This text is from the model ordinance..

### **§ 112.07 SELF-SERVICE SALES.**

It shall be unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices by any means whereby the customer may have access to those items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device between the licensee or his or her clerk and the customer. All tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices at the time this chapter is adopted shall comply with this section within 90 days following the effective date of this chapter. 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 electronic cigarettes, is exempt from the self-service merchandising provision if the license holder prohibits anyone under 18 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 18 years of age from entering the establishment.

### **§ 112.08 LICENSEE RESPONSIBILITY.**

All licensees under this chapter shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices on the licensed premises, and the sale of an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the city from also subjecting the clerk to whatever penalties are appropriate under this chapter, state or federal law, or other applicable law or regulation.

## **§ 112.09 COMPLIANCE CHECKS AND INSPECTIONS.**

All licensed premises shall be open to inspection by the city police or other authorized city official during regular business hours. From time to time, but at least once per year, the city shall conduct compliance checks by engaging, with the written consent of the appropriate parents or guardians, minors over the age of 15 years but less than 18 years, to enter the licensed premise to attempt to purchase tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices. Minors used for the purpose of compliance checks shall be supervised by city designated law enforcement officers or other designated city personnel. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices when obtaining those items as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this chapter 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.

## **§ 112.10 OTHER ILLEGAL ACTS; MINORS.**

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

(A) *Illegal sales.* It shall be a violation of this chapter for any person to sell or otherwise provide any tobacco, tobacco product, tobacco-related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery device to any minor.

(B) *Illegal possession.* It shall be a violation of this chapter for any minor to have in his or her possession any tobacco, tobacco product, tobacco-related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery device. This paragraph (B) shall not apply to minors lawfully involved in a compliance check.

(C) *Illegal use.* It shall be a violation of this chapter for any minor to smoke, chew, sniff or otherwise use any tobacco, tobacco product, tobacco-related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery device.

(D) *Illegal procurement.* It shall be a violation of this chapter for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, tobacco-related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery device, and it shall be a violation of this chapter for any person to purchase or otherwise obtain those items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device. This paragraph (D) shall not apply to minors lawfully involved in a compliance check.

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

#### **§ 112.11 EXCEPTIONS AND DEFENSES.**

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

#### **§ 112.12 SEVERABILITY.**

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

#### **§ 112.13 VIOLATIONS AND PENALTY.**

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

(B) *Violations.*

(1) *Notice.* A person violating this chapter may be issued, either personally or by mail, a citation that sets forth the alleged violation and that informs the alleged violator of his or her right to a hearing on the matter. No revocation, suspension or penalty may take effect until the licensee has received the notice. The citation shall provide notice that a hearing must be requested within ten (10) business days of receipt and that hearing rights shall be terminated if a hearing is not promptly requested. The citation shall provide information on how and where a hearing may be requested, including a contact address and phone number.

(2) *Hearings.*

(a) Upon issuance of a citation, a person accused of violating this chapter may request in writing a hearing on the matter. Hearing requests must be made within ten (10) business days of the issuance of the citation and delivered to the city clerk or other designated city officer. Failure to request a hearing within ten (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 shall set the time and place for the hearing. Written notice of the hearing time and place shall be mailed or delivered to the accused violator at least ten (10) business days prior to the hearing.

(3) *Hearing Officer.* The city official designated by the City Council shall serve as the hearing officer. The hearing officer must be an impartial employee of the city or an impartial person retained by the city to conduct the hearing.

(4) *Decision.*

(a) A decision shall be issued by the hearing officer within ten (10) business days. If the hearing officer determines that a violation of this chapter did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under paragraph (B) of this section, shall be recorded in writing, a copy of which shall be provided to the city and the accused violator by in person delivery or mail as soon as practicable. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings shall be recorded and a copy provided to the city and the acquitted accused violator by in person delivery or mail as soon as practicable.

(b) If the citation is upheld by the hearing officer, the city's actual expenses in holding the hearing, up to a maximum of \$1,000.00, shall be paid by the person requesting the hearing.

(c) The decision of the hearing officer is final.

(5) *Appeals.* Appeals of any decision made by the hearing officer must be filed in the district court for the city in which the alleged violation occurred within ten (10) business days.

(6) *Continued violation.* Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(C) *Administrative penalties.*

(1) *Licensees.* Any licensee found to have violated this chapter, or whose employee shall have violated this chapter, shall be charged an administrative fine of \$75 for a first violation of this chapter; \$200 for a second offense at the same licensed premises within a 24-month period; and \$250 for a third or subsequent offense at the same location within a 24-month period. In addition, after the third offense, the license shall be suspended for not less than seven consecutive days.

(2) *Other individuals.* Other individuals, other than minors regulated by paragraph (C)(3) of this section, found to be in violation of this chapter shall be charged an administrative fine of \$50.

(3) *Minors.* Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices, shall be subject to an

administrative fine, or may be subject to tobacco-related education classes, diversion programs, community services, or another penalty that the city believes will be appropriate and effective. The administrative fine or other penalty shall be established by the City Council in its fee resolution.

(4) *Statutory penalties.* If the administrative penalties authorized to be imposed by Minn. Stat. § 461.12, as it may be amended from time to time, differ from those established in this chapter, then the statutory penalties shall prevail.

**Section 3.** This ordinance shall take effect and be in force from and after its passage and publication according to law.

Adopted by the City Council this \_\_\_\_ day of \_\_\_\_\_, 2019

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

First reading: \_\_\_\_\_, 2019

Second reading and adoption: \_\_\_\_\_, 2019

Published: \_\_\_\_\_, 2019, *Osseo-Maple Grove Press*

[Print](#)

Osseo, MN Code of Ordinances

*Current  
Code*

## CHAPTER 112: TOBACCO REGULATIONS

---

### Section

- 112.01 Purpose
- 112.02 Definitions and interpretations
- 112.03 License
- 112.04 Fees
- 112.05 Grounds for license denial
- 112.06 Prohibited sales
- 112.07 Vending machines restricted
- 112.08 Self-service sales prohibited
- 112.09 Licensee responsibility
- 112.10 Compliance checks and inspections
- 112.11 Other illegal acts; minors
- 112.12 Violations; procedures
- 112.13 Exceptions; defenses
  
- 112.99 Penalty

### ***Cross-reference:***

*License background checks, see §§ 36.15 et seq.*

### **§ 112.01 PURPOSE.**

Because the city recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, and tobacco-related devices, and these sales, possession, and use are violations of both state and federal laws; and because studies have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this



chapter shall be intended to regulate the sale, possession, and use of tobacco, tobacco products, and tobacco-related devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, and tobacco-related devices, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in M.S. § 144.391, as it may be amended from time to time.

(1997 Code, § 27.01)

## § 112.02 DEFINITIONS AND INTERPRETATIONS.

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

(B) The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice versa. The term “shall” is mandatory and the term “may” is permissive.

(C) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**CITY.** The City of Osseo, or its officers, agents, and employees.

**COMPLIANCE CHECKS.** The system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, and tobacco-related devices are following and complying with the requirements of this chapter. **COMPLIANCE CHECKS** shall involve the use of minors as authorized by this chapter. **COMPLIANCE CHECKS** shall also mean the use of minors who attempt to purchase tobacco, tobacco products, or tobacco-related devices for educational, research, and training purposes as authorized by state and federal laws.

**COMPLIANCE CHECKS** may also be conducted by other units of government for the purpose of enforcing appropriate federal, state, or local laws and regulations relating to tobacco, tobacco products, and tobacco-related devices.

**INDIVIDUALLY PACKAGED.** The practice of selling any tobacco or tobacco product wrapped individually for sale. **INDIVIDUALLY WRAPPED** tobacco and tobacco products shall include, but not be limited to, single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this division shall not be considered **INDIVIDUALLY PACKAGED**.

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

**MINOR.** Any natural person who has not yet reached the age of 18 years.

**MOVEABLE PLACE OF BUSINESS.** Any form of business operated out of a truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address storefront or other permanent type of structure authorized for sales transactions.

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

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

***SELF-SERVICE MERCHANDISING.*** Open displays of tobacco, tobacco products, or tobacco-related devices in any manner where any person shall have access to the tobacco, tobacco products, or tobacco-related devices, without the actual physical exchange of the tobacco, tobacco products, or tobacco-related device between the customer and the licensee or employee. ***SELF-SERVICE MERCHANDISING*** shall not include vending machines.

***TOBACCO or TOBACCO PRODUCTS.*** Any substance or item containing tobacco leaf, including but not limited to cigarettes; cigars; pipe tobacco; snuff; fine cut or other chewing tobacco; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff flour; cavendish; shorts; plug and twist tobacco; dipping tobacco; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco leaf prepared in a manner so as to be suitable for chewing, sniffing, or smoking.

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

***VENDING MACHINE.*** Any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products, or tobacco-related devices upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product, or tobacco-related device.

(1997 Code, § 27.02)

### § 112.03 LICENSE.

No person or retail establishment shall sell or offer to sell any tobacco, tobacco product, or tobacco-related device without first having obtained a license to do so from the city.

(A) *Application.* An application for a license to sell tobacco, tobacco products, or tobacco-related devices shall be made on a form provided by the city. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the retail establishment for which the license is sought, and any additional information the city deems necessary. Upon receipt of a completed application, the Administrator-Clerk-Treasurer shall forward the application to the Council for action at its next regularly scheduled meeting. If the Administrator-Clerk-Treasurer shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

(B) *Action.* The Council may either approve or deny the license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the Council shall approve the license, the Administrator-Clerk-Treasurer shall issue the license to the applicant. If the Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the decision.

(C) *Term.* All licenses issued under this chapter shall be valid for one calendar year from the date of issue, except the initial license shall be valid only for the balance of the calendar year in which it is issued.



(D) *Revocation or suspension.* Any license issued under this chapter may be revoked or suspended as provided in §§ 112.12 and 112.99 of this code.

(E) *Transfers.* All licenses issued under this chapter shall be valid only on the premises of the retail establishment for which the license was issued and only for the person or retail establishment to whom the license was issued.

(F) *Moveable place of business.* No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this chapter.

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

(H) *Renewals.* The renewal of a license issued under this 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.

(1997 Code, § 27.03) Penalty, see § 112.99

#### **§ 112.04 FEES.**

No license shall be issued under this chapter until the appropriate license fee shall be paid in full. The fee for a license under this chapter shall be established by Council resolution.

(1997 Code, § 27.04)

#### **§ 112.05 GROUNDS FOR LICENSE DENIAL.**

(A) The following shall be grounds for denying the issuance or renewal of a license under this chapter; however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license:

(1) The applicant is under the age of 18 years;

(2) The applicant has been convicted within the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to tobacco or tobacco products or tobacco-related devices;

(3) The applicant has had a license to sell tobacco, tobacco products, or tobacco-related devices revoked within the preceding 12 months of the date of application;

(4) The applicant fails to provide any information required on the application, or provides false or misleading information; or

(5) The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation, from holding this type of license.

(B) If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this section.

(1997 Code, § 27.05)

**§ 112.06 PROHIBITED SALES.**

It shall be a violation of this chapter for any person to sell or offer to sell any tobacco, tobacco product, or tobacco-related device:

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

(1997 Code, § 27.06) Penalty, see § 112.99

**§ 112.07 VENDING MACHINES RESTRICTED.**

It shall be unlawful for any person licensed under this chapter to allow the sale of tobacco, tobacco products, or tobacco-related devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed premises. Further, sales by means of a tobacco vending machine are allowed only under these conditions: the machine is used to control inventory and the machine is located in an area only accessible to the employees of the retail establishment and the employee actually makes the purchase from the machine for a legal-aged customer.

(1997 Code, § 27.07) Penalty, see § 112.99

**§ 112.08 SELF-SERVICE SALES PROHIBITED.**

It shall be unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products, or tobacco-related devices by any means whereby the customer may have access to these items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product, or the tobacco-related device between the licensee or the licensee's employee and the customer. All tobacco, tobacco products, and tobacco-related devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retail establishment selling tobacco, tobacco products, or tobacco-



related devices at the time this chapter is adopted shall comply with this section within 30 days following the effective date of this chapter.

(1997 Code, § 27.08) Penalty, see § 112.99

### **§ 112.09 LICENSEE RESPONSIBILITY.**

All licensees under this chapter shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, or tobacco-related devices on the licensed premises, and the sale of this type of 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 chapter, state or federal law, or other applicable law or regulation.

(1997 Code, § 27.09) Penalty, see § 112.99

### **§ 112.10 COMPLIANCE CHECKS AND INSPECTIONS.**

All licensed premises shall be open to inspection by the City Police Department or other authorized official during regular business hours. From time to time, but at least once per year, the city shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age of 15 years but less than 18 years, to enter the licensed premises to attempt to purchase tobacco, tobacco products, or tobacco-related devices. Minors used for the purpose of compliance checks shall be supervised by a designated law enforcement officer or other designated personnel. Minors used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase, nor the unlawful possession of tobacco, tobacco products, or tobacco-related devices, when these items are obtained or attempted to be obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his or her employee and shall produce identification, if any exists, for which he or she is asked. Nothing in this section shall prohibit compliance checks authorized by state or federal laws for educational, research, or training purposes or required for the enforcement of a particular state or federal law.

(1997 Code, § 27.10) Penalty, see § 112.99

### **§ 112.11 OTHER ILLEGAL ACTS; MINORS.**

Unless otherwise provided, the following acts shall be a violation of this chapter.

(A) *Illegal sales.* It shall be a violation of this chapter for any person to sell or otherwise provide any tobacco, tobacco product, or tobacco-related device to any minor.

(B) *Illegal possession.* It shall be a violation of this chapter for any minor to have in his or her possession any tobacco, tobacco product, or tobacco-related device. This division shall not apply to minors while lawfully involved in a compliance check.

(C) *Illegal use.* It shall be a violation of this chapter for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, or tobacco-related device.

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

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

(F) *Tobacco and tobacco-related devices on school grounds.* It shall be a violation of this chapter for any person to have in his or her possession any tobacco, tobacco product, or tobacco-related devices while on the grounds of any school. However, it is not a violation of this section for a person more than 18 years of age to have contained in his or her vehicle tobacco, tobacco products, or tobacco-related devices not otherwise prohibited while lawfully on school grounds.

(1997 Code, § 27.11) Penalty, see § 112.99

## **§ 112.12 VIOLATIONS; PROCEDURES.**

(A) *Notice.* Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his or her right to be heard on the accusation. The citation shall further state the penalty imposed if the alleged violator does not request a hearing.

(B) *Hearings.* If a person accused of violating this chapter so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

(C) *Hearing officer.* The Council shall serve as the hearing officer.

(D) *Decision.* If the hearing officer determines that a violation of this chapter did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under § 112.99 of this code, shall be recorded in writing, a copy of which shall be provided to the violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings shall be recorded and a copy provided to the acquitted accused.

(E) *Appeals.* Appeals of any decision made by the hearing officer shall be filed in the district court of the jurisdiction of the city.

(1997 Code, § 27.12) Penalty, see § 112.99

## **§ 112.13 EXCEPTIONS; DEFENSES.**



(A) Nothing in this chapter shall prevent the providing of tobacco, tobacco products, or tobacco-related devices to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony.

(B) It shall be an affirmative defense to the violation of this chapter for a person to have reasonably relied on proof of age as provided by M.S. § 340A.503(6), as it may be amended from time to time.

(1997 Code, § 27.14)

### **§ 112.99 PENALTY.**

(A) *Continued violations.* Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(B) *Administrative penalties.*

(1) *Licensees.* Any licensee found to have violated this chapter, or whose employee shall have violated this chapter, shall be charged an administrative fine for a first violation of this chapter, a second violation at the same licensed premises within a 24-month period, or a third or subsequent violation at the same location within a 24-month period. In addition, after the third violation, the license shall be suspended for not less than seven days. All administrative fines will be set by Council resolution.

(2) *Other individuals.* Other individuals, other than minors regulated by division (B)(3) of this section, found to be in violation of this chapter shall be charged an administrative fine. Those who provide but do not sell tobacco to minors shall be charged an administrative fine. All administrative fines will be set by Council resolution.

(3) *Minors.* Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, or tobacco-related devices, shall be charged an administrative fine and referred to the school for dependency counseling, or the minor may be assigned community service that must be completed in a specified amount of time, if an administrative fine is not imposed. All administrative fines will be set by Council resolution.

(C) *Misdemeanor prosecution.* Any violation of this chapter shall be a misdemeanor, and nothing in this chapter shall prohibit the city from seeking prosecution of the violation as a misdemeanor rather than proceeding with the administrative remedies stated above.

(1997 Code, § 27.13) Penalty, see § 10.99



## City of Osseo City Council Work Session Meeting Item

**Agenda Item:** City Rental Properties Review

**Meeting Date:** April 22, 2019

**Prepared by:** Riley Grams, City Administrator

**Attachments:** Property Rental Spreadsheet

**Policy Consideration:**

Consider whether or not the City should continue to rent out the Park rental homes located behind Boerboom Park.

**Background:**

Similar to our review of 2017, Staff has compiled all of the financial data relating to the three City-owned single-family rental homes located behind Boerboom Park for 2018. The focus question before the Council this evening is whether or not Staff should continue to manage and rent out the Park homes. Keep in mind the attached data is for 2018 only.

The first page shows all three properties with the expected income and expenses in the first column, and the actual income and expenses in the second column. As you can see, if we had renters in the three properties the entire 12 months, with no move outs or anything, we would expect total revenue minus expenses of \$31,112.21. The actual revenue minus expenses for those three properties for 2018 was \$7,552.44. For comparison, the total actual revenue minus expenses for those three properties in 2017 was \$18,856.70.

The loss of \$23,559.77 ( $31,112.21 - 7,552.44$ ) can be attributed to turnover in renters at the properties, clean up and painting costs, as well as legal expenses relating a specific renter who stopped making rent payments, was evicted by the City, and additional legal expenses to try and recoup some of the lost revenue and expenses to bring that property back up to rentable condition. As you may recall, the renter who lived at 17 4<sup>th</sup> Street NE stopped making rent payments for a few months, and the City took action to evict the tenant. After he left, we were able to access the home and found it in complete disrepair. He left all of his material belongings there, which cost the City considerable money to remove the belongings and then repair the damage done to the property. We also incurred additional legal fees attempting to collect funds from that renter. We now have a Court order in place so that if that tenant surfaces and reports any earnings, we are able to collect what we can from him to offset our losses. This is always the largest fear when you are a landlord. If you get stuck with a bad renter, you can actually lose quite a bit of money on the property over the course of the calendar year. The two biggest issues we have with renting these properties is finding good solid renters, who pay the full amount each month on time, and clean up and legal costs. Additionally, we had some other maintenance issues pop up at a few of the properties over the last year that we needed to address.

We have worked with Renters Warehouse and Tradewinds on these three properties to help assist the City in finding good renters. However, there is never any guarantee that the renters will be model tenants. Each new proposed tenant does undergo some background review, including credit history and income verification. But even if those



reports look good, it doesn't always mean the tenant will work out. Renting properties consuming a good amount of Staff time as well. Administrative Assistant Karen Broden manages the properties on the City's behalf. Public Works Director Nick Waldbillig and his crew cares for the properties and handles all maintenance requests. City Accountant Teri Portinen handles the collection of rent payments and the expenses that come with renting properties. As you can see, renting properties is very time consuming for Staff and can lead to a lot of headaches.

The income and expenses go to and come out of the City's Park Dedication Fund. When the City first began renting these properties, the Park Dedication Fund had a balance of \$64,908.00. The Fund has now grown to \$138,096.02 due to the renting of these properties. Here is a quick history on the balance of that fund:

2016:	\$65,406.01
2017:	\$106,945.80
2018:	\$136,450.61
Current YTD:	\$138,096.02

The Park Dedication Fund is expected to cover the cost of purchasing the final Park property, which would then give the City ownership of the entire block, allowing for the planned expansion of Boerboom Park. I have attempted several times over the past year to contact the son of the owner of that last home, with little success. It is critical that the City be able to purchase that home so that we can eventually realize the City's dream of expanding Boerboom Park into a full City block park.

**Budget or Other Considerations:**

All income and expenses go to and come from the City's Park Dedication Fund. That fund has a current balance of \$138,096.02 (as of April 18, 2019).

**Recommendation/Action Requested:**

Staff recommends the City Council discuss this item and consider whether or not the City should continue to rent these properties with the funds going to the Park Dedication Fund.

	2018 Annual Budgeted income/expense	2018 Actual income/expense
<b>Address - Monthly rent</b>		
<b>417 1st Ave NE - \$1,250/\$1,450</b>	\$15,000.00	\$16,000.00
Tradewind Leasing Fee-mgmt (85% 1 mo)		
Tradewind Monthly Commission (\$85 ea)	(\$1,020.00)	(\$1,020.00)
Tradewind Year-end CRP Fee (\$10)	(\$10.00)	
<b>Income after Tradewind</b>	\$13,970.00	\$14,980.00
Water/Sewer/Storm: avg \$121.91 qtr	(\$487.64)	(\$1,680.95)
Trash Removal: 65 gallon @ \$20/mo	(\$240.00)	(\$250.45)
Centerpoint Energy		
Xcel Energy		
Carpet cleaning/painting/cleaning		
Water Softener rental @ \$15/mo	(\$180.00)	(\$165.00)
Annual inspection fee	(\$81.25)	(\$90.00)
Annual maintenance cost	(\$1,500)	(\$429.80)
Annual property tax*	(\$2,821.12)	(\$3,164.62)
Legal expense		
<b>Income after City Expense</b>	\$8,659.99	<b>\$9,199.18</b>
*2019 tax \$3,353.41		

	Annual Budget income/expense	Tenant #1 Actual Income/Expense	Tenant #2 Actual Income/Expense	Total
<b>Address - Monthly rent</b>				
<b>17 4th St NE - \$1,295/\$1,300</b>	\$15,540.00	\$1,332.00	\$8,247.00	
Renters Warehouse CRP fee	(\$10.00)	(\$10.00)		
Renters Warehouse commissions	(\$1,068.00)	(\$356.00)		
Tradewind monthly fee @ \$85 (June)	(\$1,068.00)		-\$425.00	
Tradewind mgmt fee	(\$350.00)		-\$1,275.00	
Additional fee	(\$10.00)			
<b>Income after Tradewind Property</b>	\$13,034.00	\$966.00	\$6,547.00	
Water/Sewer/Storm: avg \$121.91 qtr	(\$487.64)		-\$243.84	
Randy's Sanitation	(\$244.00)		(\$241.36)	
CenterPoint Energy (heating)		(\$199.85)		
Xcel Energy (electricity)		(\$118.99)		
Finken water softener			(\$15.00)	
Annual inspection fee	(\$81.25)	(\$90.00)		
Annual est. maintenance cost	(\$1,500)	(\$3,760.97)		
Legal fees - eviction cost		(\$6,035.85)		
Annual property tax*	(\$2,156.15)		-\$3,031.38	
<b>Income after City Expense</b>	\$10,721.11	(\$9,239.66)	\$3,015.42	<b>(\$6,224.24)</b>
*2019 tax \$3,386.30				

	2018 Annual Budget income/expense	Tenant #1 Actual Income/Expense	Tenant #2 Actual Income/Expense	Total
<b>Address - Monthly rent</b>				
<b>25 4th St NE - \$1,300/\$1,450</b>	\$15,600.00	\$2,600.00	\$10,500.00	
RW Monthly Commission - \$89.00	(\$1,188.00)	(\$178.00)	-\$17.23	
RW Tenant placement fee			-\$1,450.00	
RW Lease admin fee			-\$150.00	
RW Lease modification fee	(\$350.00)	(\$150.00)		

RW 2017 CRP fee	(\$10.00)	(\$10.00)		
<b>Income after Renters Warehouse</b>	\$14,052.00	\$2,262.00	\$8,882.77	
Water/Sewer/Storm: avg \$121.91 qtr	(\$487.64)		-\$549.21	
Trash Removal: 65 gallon @ \$63/qtr	(\$252.00)		(\$256.06)	
CenterPoint Energy (heat)		(\$193.42)		
Xcel Energy		(\$88.39)		
Annual inspection fee	(\$81.25)	(\$90.00)		
Prepare for new tenant		(\$916.66)		
Annual est. maintenance cost	(\$1,500)		(\$1,278.87)	
Annual property tax*	(\$2,767.20)		(\$3,114.66)	
Legal expense		(\$149.90)		
<b>Income after City Expense</b>	\$11,731.11	\$973.53	\$3,683.97	<b>\$4,657.50</b>
*2019 tax \$3,205.47				
417 1st Ave NE	\$9,119.18			
17 4th St NE	-\$6,224.24			
25 4th St NE	\$4,657.50			
<b>Total</b>	<b>\$7,552.44</b>			

## 417 1st Ave NE

Address - Monthly rent	2018 Budget income/expense	2018 Actual income/expense
<b>417 1st Ave NE - \$1,250/\$1,450*</b>	\$15,000.00	\$16,000.00
Tradewind Leasing Fee-mgmt (85% 1 mo)		\$0.00
Tradewind Monthly Commission (\$85 ea)	(\$1,020.00)	(\$1,020.00)
Tradewind Year-end CRP Fee (\$10)	(\$10.00)	
<b>Income after Tradewind</b>	\$13,970.00	\$14,980.00
Water/Sewer/Storm: avg \$121.91 qtr	(\$487.64)	(\$1,680.95)
Trash Removal: 65 gallon @ \$20/mo	(\$240.00)	(\$250.45)
Centerpoint Energy		
Xcel Energy		
Carpet cleaning/painting/cleaning		
Water Softener rental @ \$15/mo	(\$180.00)	(\$165.00)
Annual inspection fee	(\$81.25)	(\$90.00)
Annual estimated maintenance cost	(\$1,500)	(\$429.80)
Annual property tax	(\$2,821.12)	(\$3,164.62) 2019 tax \$3,353.41
Legal expense		
<b>Income after City Expense</b>	<b>\$11,481.11</b>	<b>\$9,199.18</b>

7/11/2017 Pereira/Ruiz lease starts thru 7/30/18  
Renewed through 7/30/19

\* renewal rent increase to \$1,450

**Public Works**                      -\$429.80

### Expenses

Finken water softener \$15 x 11 mo                      \$165.00

\$0.00

3/7/2018 Randys Sanitation 96G Trash cart	\$2.33	1st qtr UB	\$512.55
Randys Sanitation	\$50.06	2nd qtr UB	528.82
Randys Sanitation	\$66.02	3rd qtr UB	\$346.10
Randys Sanitation	\$66.02	4th qtr UB	\$293.48
Randys Sanitation	\$66.02		\$1,680.95
	\$250.45		

## 17 4th Street NE

Address - Monthly rent	Annual Budget income/expense	Tenant #1 Actual Income/Expense	Tenant #2 Actual Income/Expense	
<b>17 4th St NE - \$1,295/\$1,300*</b>	\$15,540.00	\$1,332.00	\$8,247.00	\$9,579.00
Renters Warehouse CRP fee	(\$10.00)	(\$10.00)		(\$10.00)
Renters Warehouse commissions	(\$1,068.00)	(\$356.00)		(\$356.00)
Tradewind monthly fee @ \$85 (June)	(\$1,068.00)		-\$425.00	-\$425.00
Tradewind mgmt fee	(\$350.00)		-\$1,275.00	(\$1,275.00)
Additional fee	(\$10.00)			
<b>Income after Tradewind Property</b>	\$13,034.00	\$966.00	\$6,547.00	\$7,513.00
Water/Sewer/Storm: avg \$121.91 qtr	(\$487.64)		-\$243.84	(\$243.84)
Randy's Sanitation	(\$244.00)		(\$241.36)	(\$241.36)
CenterPoint Energy (heating)		(\$199.85)		(\$199.85)
Xcel Energy (electricity)		(\$118.99)		(\$118.99)
Finken water softener			(\$15.00)	(\$15.00)
Annual inspection fee	(\$81.25)	(\$90.00)		(\$90.00)
Annual est. maintenance cost	(\$1,500)	(\$3,760.97)		(\$3,760.97)
Legal fees - eviction cost		(\$6,035.85)		(\$6,035.85)
Annual property tax	(\$2,156.15)		-\$3,031.38	(\$3,031.38)
<b>Income after City Expense</b>	\$10,721.11	(\$9,239.66)	\$3,015.42	(\$6,224.24)
2019 \$3,386.30		(\$9,239.66)	\$6,030.84	(\$3,208.82)

\*Eviction started start of 2018, security  
deposit return & new tenant lease  
started June 2018 @ \$1,300/mo

Mar-18 CenterPoint	\$81.40	Randys	\$58.15
3/8-3/29 CenterPoint	\$64.28	Randys	\$58.15
4/27-5/29 CenterPoint	\$24.34	Randys	\$62.53
5/29-6/27 CenterPoint	\$29.83	Randys	\$62.53
	<u>\$199.85</u>		<u>\$241.36</u>

3/8-3/22 Xcel Energy	\$18.75	1st Qtr UB	\$121.92
3/8-3/22 Xcel Energy	\$26.71	2nd qtr UB	\$121.92
3/22-4/22 Xcel Energy	\$24.96	3rd qtr UB	\$121.92
4/22-5/21 Xcel Energy	\$21.82	4th qtr UB	\$137.15
5/21-6/20 Xcel Energy	\$22.21		\$502.91
6/20-6/27 Xcel Energy	\$4.44		
	<u>\$118.89</u>		

December Finken Water	\$15.00
-----------------------	---------

**17 4th Street NE**

			Month legal exp.	
Clean up & repairs			paid	Kennedy Graven
4/12/2018 Junk Genius	\$525.00		Jan	\$990.00
4/16/2018 Bruce Beck	\$1,695.00		Mar	-19.9
6/25/2018 KW Flooring	\$3,815.07		May	\$627.00
6/13/2018 Servicemaster	\$975.00		June	\$438.00
	<b>\$7,010.07</b>		June	\$890.50
			July	\$128.00
Public Works Maintenance			Sept	\$247.50
6/22/2018 Menards	\$127.96		Oct	\$429.00
6/25/2018 Menards	\$9.56		Nov	\$1,115.50
9-Jul Menards	\$261.58		Nov	\$484.00
9-Jul Menards	\$122.76		Dec	\$66.00
9-Jul Menards	\$39.88			<b>\$5,395.60</b>
23-Jul Menards	\$8.84			
7-Aug Menard return	-\$424.22	Karen Broden		
7-Aug Menards	\$144.54	Travel		18.64
7-Aug Menards	\$39.88	Travel		36.85
7-Aug Menards	\$267.36	Total		<b>55.49</b>
7-Aug Menards returns	-\$21.78			
7-Aug Menards returns	-\$5.78	ECM Publishing		
8/27/2018 Fleet Farm	\$9.02	Eviction notice		<b>584.76</b>
24-Sep Menards	\$21.78			
24-Sep Menards	\$19.85			
26-Nov Finken Water	\$423.27			
10-Dec Menards	\$15.78			
	<b>\$1,060.28</b>			
Public Works Allocat	\$2,700.69			
Total maintenance	<b>\$3,760.97</b>			

## 25 4th Street NE

Address - Monthly rent	2018 Annual	Tenant #1 Actual	Tenant #2 Actual
	Budget income/expense	Income/Expense	Income/Expense
<b>25 4th St NE - \$1,300/\$1,450 *</b>	\$15,600.00	\$2,600.00	\$10,500.00
RW Monthly Commission - \$89.00	(\$1,188.00)	(\$178.00)	-\$17.23
RW Tenant placement fee			-\$1,450.00
RW Lease admin fee			-\$150.00
RW Lease modification fee	(\$350.00)	(\$150.00)	
RW 2017 CRP fee	(\$10.00)	(\$10.00)	
<b>Income after Renters Warehouse</b>	\$14,052.00	\$2,262.00	\$8,882.77
Water/Sewer/Storm: avg \$121.91 qtr	(\$487.64)		-\$549.21
Trash Removal: 65 gallon @ \$63/qtr	(\$252.00)		(\$256.06)
CenterPoint Energy (heat)		(\$193.42)	
Xcel Energy		(\$88.39)	
Annual inspection fee	(\$81.25)	(\$90.00)	
Prepare for new tenant		(\$916.66)	
Annual est. maintenance cost	(\$1,500)		(\$1,278.87)
Annual property tax	(\$2,767.20)		(\$3,114.66)
Legal expense		(\$149.90)	
<b>Income after City Expense</b>	\$11,731.11	\$973.53	\$3,683.97
			<b>\$4,657.50</b>

\* early termination of lease left vacancy; new tenants rent as of June \$1,450

4/2/2018	CenterPoint	\$81.68	Feb JE Randys	\$62.53
5/1/2018	CenterPoint	\$92.75	June Pay Randys	\$62.53
June	CenterPoint	\$18.99	Aug Pay Randys	\$68.47
		\$193.42	Nov Pay Randys	\$62.53
				<u>\$256.06</u>

3/22-4/22	Xcel Energy	\$43.40		
5/21-5/26	Xcel Energy	\$9.92	1st Qtr UB	\$121.92
4/22-5/21	Xcel Energy	35.07	2nd qtr UB	\$121.92
		\$88.39	3rd qtr UB	\$165.56
			4th qtr UB	\$139.81
				<u>\$549.21</u>

### New tenant preparations

May	Bruce Beck Paint	\$650.00
April	ServiceMaster	\$266.66
		<u>\$916.66</u>

### Repairs & Maintenance

April	Menards	\$138.71
June	Menards	\$9.64
August	Menards	\$13.05
	Public Works	\$1,117.47
		<u>\$1,278.87</u>