

CITY OF CHAMPLIN
ORDINANCE NO. 869

INTERIM ORDINANCE PLACING A 12-MONTH MORATORIUM ON THE
ESTABLISHMENT OR EXPANSION OF TOBACCO SHOPS

The Council of the City of Champlin does ordain as follows:

SECTION 1. FINDINGS.

1. The City Council determines there is a need to study its regulations regarding retailers with a significant portion of their products and sales being of tobacco-related products ("Tobacco Shops" or "Tobacco Stores").
2. The City currently does not expressly regulate Tobacco Shops as a separate use. The City has experienced businesses who have started a retail business but have become a Tobacco Shop even though that use is not recognized as a permitted use in the City's zoning regulations.
3. The City also recognizes a need to update its tobacco regulations to keep pace with recent changes in both federal and state laws.
4. The City Council is authorized to adopt an interim ordinance "to regulate, restrict, or prohibit any use . . . within the jurisdiction or a portion thereof for a period not to exceed one year from the date it is effective." Minnesota Statutes, section 462.355, subdivision 4(a).
5. The City Council regulates the sale of tobacco-related products through its program of business licensing.
6. The Minnesota Supreme Court in *Almquist v. Town of Marshan*, 245 N.W.2d 819 (Minn. 1976) upheld the enactment of a moratorium despite the lack of express statutory authority as being a power inherent in a broad legislative grant of power to municipalities. In most cases, the enactment of business licensing requirements is based on a city's police powers, which is the broadest grant of power to cities. Inherent in that broad grant of authority is the power to temporarily place a moratorium on a business activity to study and potentially implement licensing regulations on that business activity.
7. In order to protect the planning process and the health, safety, and welfare of the residents while the City conducts a study of Tobacco Shops and the sale of tobacco-related products, the City Council determines it is in the best interests of the City to impose a temporary moratorium on the establishment and expansion of Tobacco Shops to allow the City time to complete its study, determine how such sales and uses should be regulated under the City Code, and to draft and enact such legislative updates as needed.

SECTION 2. DEFINITIONS. For the purposes of this Ordinance, the following words, terms, and phrases shall have the meanings given them in this Article.

1. "City" means the City of Champlin.
2. "City Code" means the Municipal Code of Champlin, Minnesota.

3. "Electronic Delivery Device" means an electronic product that is designed to use, or that uses, liquids or pre-loaded cartridges to simulate smoking in the delivery of nicotine or any other substance through inhalation of the aerosol or vapor produced from the substance.
4. "Expand" means, with respect to a Tobacco Shop, increasing the amount of shelf space or floor area within an existing store used to display or sell Tobacco-Related Products. The term also includes increasing the size of the building or space in which the Tobacco Shop is located.
5. "Tobacco" means and 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, or any component, part, or accessory of a tobacco product; cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco 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.
6. "Tobacco-Related Products" mean Tobacco and related materials and devices used in rolling, smoking, or storing Tobacco. The term includes Electronic Delivery Devices and the substances sold for use by such devices.
7. "Tobacco Shop" or "Tobacco Store" means a retail establishment with sales, or projected sales, of Tobacco-Related Products constituting at least 40% of the establishment's total sales in any month.

SECTION 3. STUDY. The City Council hereby authorizes and directs the City Administrator to have City staff conduct a study regarding Tobacco Shops and the sale of Tobacco-Related Products to determine whether and how Tobacco Shops should be expressly allowed under the City Code, if so, in which zoning districts, and the types of performance standards and other restrictions that should be enacted to regulate the use.

SECTION 4. MORATORIUM. A moratorium is hereby imposed within the City to prohibit any business, person, or entity from establishing or expanding a Tobacco Shop within the jurisdictional boundaries of the City. The City shall not accept, process, or act on any tobacco license application, site plan, building permit, or zoning approval for a new or expanded Tobacco Shop.

SECTION 5. VIOLATIONS. During the period of the moratorium, it is a violation of this Ordinance to do any of the following within the City:

1. Establish a new Tobacco Shop; or
2. Expand an existing Tobacco Shop.

SECTION 6. EXCEPTIONS. The moratorium imposed by this Ordinance does not apply to the following:

1. Renewal of a tobacco license for a Tobacco Shop lawfully existing prior to the effective date of this Ordinance; and
2. The continued operation of a Tobacco Shop lawfully existing prior to the effective date of this Ordinance.
3. Any completed tobacco license application for a Tobacco Shop submitted to the City on or before the effective date of this Ordinance. Any license or permit application submitted and received prior to the effective date of this Ordinance, but deemed incomplete by the City, shall be returned to the applicant, along with the application fee, and no resubmission of such license or permit application shall be accepted during the moratorium.

SECTION 7. ENFORCEMENT. The City may enforce this Ordinance by mandamus, injunctive relief, or other appropriate civil remedy in any court of competent jurisdiction. The City Council hereby authorizes the City Administrator, in consultation with the City Attorney, to initiate any legal action deemed necessary to secure compliance with this Ordinance. A violation of this Ordinance is also subject to the City's general penalty listed in Champlin City Code § Sec. 1-7.

SECTION 8. EFFECTIVE DATE AND TERM. This Ordinance shall be in full force and effect immediately from and after its passage by the City Council, and shall have a term of 12 months. This Ordinance shall remain in effect until the expiration of the 12-month term, until it is expressly repealed by the City Council, or until the effective date of an ordinance amending the City Code to address Tobacco Shops, whichever occurs first.

SECTION 9. GENERAL PROVISIONS.

1. Severability. Every section, provision, and part of this Ordinance is declared severable from every other article, section, provision, and part thereof. If any article, 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 article, section, provision, or part of this Ordinance.

Waive First Reading: November 28, 2022

Second Reading: November 28, 2022

Adoption: November 28, 2022

Attest:

Ryan Karasek, Mayor
Julie Tembreull, City Clerk