

CHAPTER 118: TOBACCO AND NICOTINE PRODUCTS

118.01	Purpose and intent
118.02	Definitions
118.03	License
118.04	Fees
118.05	Basis for denial of license
118.06	Prohibited sales
118.07	Self-service sales
118.08	Responsibility
118.09	Compliance checks and inspections
118.10	Other illegal acts
118.11	Exceptions and defenses
118.12	Violations and penalty

§ 118.01. 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, 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 ordinance shall be intended to regulate the sale, possession and use of tobacco, tobacco products, tobacco-related devices, 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, 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 Minnesota Statutes Section 144.391, as it may be amended from time to time. In making these findings, the City Council accepts the conclusions and recommendations of Center for Disease Control in its study "Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997," and of the following medical professionals in these medical journals: 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.

§ 118.02. DEFINITIONS.

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

COMPLIANCE CHECKS. The system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery 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, tobacco-related devices, or nicotine or lobelia delivery devices for educational, research and training purposes as authorized by state and federal laws. Compliance checks may also be conducted by 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, and nicotine or lobelia delivery 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 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 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. This includes products known as “e-cigarettes.”

RETAIL ESTABLISHMENT. Any place of business where tobacco, tobacco products, tobacco-related devices, 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.

SELF-SERVICE MERCHANDISING. Open displays of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices in any manner where any person shall have access to the tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices, without the assistance or intervention of the licensee or the licensee's employee. The assistance 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, or any other lighted or heated tobacco or plant product. Smoking also includes carrying a lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation.

TOBACCO or TOBACCO 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, 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.

TOBACCO-RELATED DEVICES. Tobacco-related devices includes 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 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.

§ 118.03. LICENSE.

(A) *License required.* No person shall sell or offer to sell any tobacco, tobacco products, tobacco-related device, or nicotine or lobelia delivery device without first having obtained a license to do so from the city.

(B) *Application.* An application for a license to sell tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices shall be made on a form provided by the city. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the city deems necessary. The applicant must also authorize the city to perform a criminal history background check on him or her and must pay the associated background check fee as set forth in the city's fee schedule. The applicant shall also provide proof of commercial liability insurance with a minimum liability limit of \$100,000. Upon receipt of a completed application, the City Clerk shall forward the application to the City Council for action at its next regularly scheduled City Council meeting. If the City Clerk shall determine 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.

(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 section shall be valid for one calendar year from the date of issue.

(E) *Revocation or suspension.* Any license issued under this section may be revoked or suspended as provided in Section 118.13 of this Chapter.

(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 to be licensed 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 no more than 60 days before the expiration of the current license.

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

(K) *Smoking.* Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a retail tobacco license. Smoking for the purposes of sampling tobacco and tobacco related products is prohibited.

§ 118.04. FEES.

No license shall be issued under this Chapter until the appropriate license fee and criminal history background check fee are paid in full. The fees for a license under this Chapter and the criminal history background check shall be established in the city's fee schedule.

§ 118.05. 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, or nicotine or lobelia delivery devices;
- (3) The applicant has had a license to sell tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices revoked within the preceding three years 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;
- (6) Any taxes or utility bills for the premises for which the license will be issued are delinquent;
- (7) The applicant has failed to pay the license fee; or
- (8) The applicant has failed to provide proof of liability insurance as required by this Chapter.

(B) However, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license.

(C) 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 Chapter.

§ 118.06. 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, or nicotine or lobelia delivery device:

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

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

(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 premise in order to receive the tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device between the licensee, or the licensee's employee, and the customer.

(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. It is not the intent of this provision to ban the sale of lawfully manufactured cigarettes or other tobacco products.

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

§ 118.07. SELF-SERVICE SALES.

It shall be unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices by any means where by 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, 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, 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.

§ 118.08. 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, 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.

§ 118.09. COMPLIANCE CHECKS AND INSPECTIONS.

All licensed premises shall be open to inspection by the city police or other authorized city officials 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 premise to attempt to purchase tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices. Minors used for the purpose of compliance checks shall be supervised by city designated law enforcement officers or other designated city personnel. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices when those items are obtained as a part of the compliance check. 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 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.

§ 118.10. OTHER ILLEGAL ACTS.

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, 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, or nicotine or lobelia delivery device. This paragraph 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, 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, 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.

§ 118.11. EXCEPTIONS AND DEFENSES.

(A) Nothing in this Chapter shall prevent the providing of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery 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 described by state law.

§ 118.12. 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 ordinance.

(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 which shall inform the alleged violator of his or her right to be heard on the accusation.

(2) Hearing.

(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 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 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 Council or its designee shall serve as the hearing officer.
 - (4) Decision.
 - (a) 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 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 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 shall be filed in the district court for the city in which the alleged violation occurred within 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) Licenses. 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) Statutory penalties. If the administrative penalties authorized to be imposed by Minnesota Statutes, Section 461.12, as it may be amended from time to time, differ from those established in this section, then the statutory penalties shall prevail.
- (4) Misdemeanor. Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this Chapter.

(Ord. No. ____ adopted _____, 2014)