

CHAPTER 118: TOBACCO REGULATIONS

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§ 118.01 PURPOSE AND INTENT.

Because the city recognizes that sale of licensed products to persons under the age of 21 violates both state and federal law; 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 almost no one starts smoking after age 25; ; and because marketing analysis, public health research, and commercial tobacco industry documents reveal that tobacco companies have used menthol, mint, fruit, candy, and flavors as a way to target youth and young adults and that the presence of such flavors can make it more difficult to quit; and 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 licensed products for the purpose of enforcing and furthering existing laws, to protect youth and young adults against the serious effects associated with the illegal use of licensed products, 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.

(Am. Ord. 720, passed 1-3-13)

§ 118.02 DEFINITIONS.

Except as may otherwise be 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.

CHILD-RESISTANT PACKAGING. Packaging that meets the definition set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1,

2015, and was tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.

COMPLIANCE CHECKS. The system the city uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this chapter. **COMPLIANCE CHECKS** shall involve the use of persons under the age of 21 who purchase or attempt to purchase licensed products. **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 licensed products.

DELIVERY SALE. The sale of any licensed product to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the-counter sales transaction in a licensed retail establishment. **DELIVERY SALE** includes but is not limited to the sale of any licensed product when the sale is conducted by telephone, other voice

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r app-based service. **DELIVERY SALE** includes delivery by licensees or third parties by any means, including curbside pick-up.

ELECTRONIC DELIVERY DEVICE. Any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through the inhalation of aerosol or vapor from the product. **ELECTRONIC DELIVERY DEVICE** includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems, or under any other product name or descriptor. **ELECTRONIC DELIVERY DEVICE** includes any component part of a product, whether or not marketed or sold separately. **ELECTRONIC DELIVERY DEVICE** does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.

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% 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 licensed product that has been removed from its packaging and sold individually.

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term that collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

MOVEABLE PLACE OF BUSINESS. Any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and that is not a fixed address or other permanent type of structure licensed for over-the-counter sales transactions.

NICOTINE OR LOBELIA DELIVERY DEVICES. Any product containing or delivering nicotine or lobelia intended for human consumption, whether natural or synthetic, or any part of such a product, that is not tobacco or an electronic delivery device as defined in this section. **NICOTINE OR LOBELIA DELIVERY PRODUCT** does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as "drugs," "devices," or "combination products," as defined in the Federal Food, Drug, and Cosmetic Act.

RETAIL ESTABLISHMENT. Any place of business where licensed products are available for sale to the general public. The phrase 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 licensed products in any manner where any person shall have access to the licensed products, 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 licensed product between the customer and the licensee or employee. The phrase shall not include vending machines. **SELF-SERVICE SALES** are interpreted as being any sale where there is not an actual physical exchange of the tobacco between the clerk and the customer.

SMOKING. Inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. **SMOKING** also includes carrying or using an activated electronic delivery device.

TOBACCO or TOBACCO PRODUCTS. Any product containing, made, or derived from tobacco that is intended for human consumption, including but not limited to, cigarettes, cigars, pipe tobacco, snuff, fine cut or other chewing tobacco, cheroots, stogies, perique, granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco, snuff flowers, cavendish, shorts, plug and twist tobaccos, dipping tobaccos, refuse scraps, clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco leaf prepared in a manner as to be suitable for chewing, sniffing, smoking or ingestion by any other means, including dissolvable or absorbable products. **TOBACCO or TOBACCO PRODUCTS** does not include any nicotine cessation product that has been authorized by the United States Food and Drug Administration to be marketed and for sale as "drugs," "devices," or "combination products," as defined in the Federal Food, Drug, and Cosmetic Act.

TOBACCO-RELATED DEVICES. Any tobacco product as well as a pipe, rolling papers, ashtray or other device intentionally designed or intended to be used with licensed products. **TOBACCO-RELATED DEVICES** include components of tobacco-related devices or tobacco products, which may be marketed or sold separately. **TOBACCO-RELATED DEVICES** may or may not contain tobacco.

VENDING MACHINE. Any mechanical, electric or electronic, or other type of device which dispenses licensed products upon payment by any form by the person seeking to purchase the licensed product.

YOUTH-ORIENTED FACILITY. Any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or that primarily sells, rents, or offers services or products that are consumed or used primarily by persons under the age of 21. **YOUTH-ORIENTED FACILITY** includes, but is not limited to, schools, playgrounds, recreation centers, and parks.

(Am. Ord. 720, passed 1-3-13; Am. Ord. 747, passed 1-19-2016)

§ 118.03 LICENSE.

(A) *License required.* No person shall sell or offer to sell any licensed products without first having obtained a license to do so from the city.

(B) *Application.* An application for a license to sell licensed products 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 Manager shall forward the application to the City Council for action at its next regularly scheduled City Council meeting. If the City Manager 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 it deems necessary to complete any investigation of the application or the applicant. If the City Council shall approve the license, the City Manager 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) *Duration of license.* Unless otherwise specified, a license shall be valid for a year or the part of the year for which it is issued, and shall expire on June 30.

(E) *Revocation or suspension.* Any license issued under this chapter may be revoked or suspended as provided in § 118.99.

(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.

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

(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.

(I) *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.

(J) *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 licensed products is prohibited.

(K) *Maximum number of licenses*. The maximum number of licenses issued by the city at any time is limited to [INSERT NUMBER]. When the maximum number of licenses has been issued, the city may place persons seeking licensure on a waiting list and allow them to apply on a first-come, first-served basis, as licenses are not renewed or are revoked. A new applicant who has purchased a business location holding a valid city license will be entitled to first priority, provided the new applicant meets all other application requirements in accordance with this ordinance.

(L) *Proximity to youth-oriented facilities*. No license will be granted to any person for a retail establishment location that is within [750] feet of a youth-oriented facility, as measured by the shortest line from the property line of the space to be occupied by the proposed licensee to the nearest property line of a youth-oriented facility. This restriction does not apply to an existing license holder who has been licensed to sell licensed products in that same location for at least one year before the date this section was enacted into law.

(Am. Ord. 720, passed 1-3-13; Am. Ord. 747, passed 1-19-2016) Penalty, see § 118.99

§ 118.04 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 as established from time to time by Council ordinance, as it may be amended from time to time.

Penalty, see § 118.99

§ 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 21 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 licensed products.

(3) The applicant has had a license to sell licensed products 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.

(6) The business for which the license is requested is a moveable place of business. Only fixed-location retail establishments are eligible to be licensed.

(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 chapter.

(Am. Ord. 720, passed 1-3-13) Penalty, see § 118.99

§ 118.06 PROHIBITED SALES.

No person shall sell or offer to sell any licensed product:

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

i. Verification. Licensees must by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.

ii. Signage. Notice of the legal sales age, age verification requirement, and possible penalties for underage sales must be posted prominently and in plain view at all times at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the city, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.

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

(C) By means of self-service display. All licensed products must be stored behind the sales counter, in a locked case, in a storage unit, or in another area not freely accessible to the general public.

(D) By means of delivery sales. All sales of licensed products must be conducted in person, in a licensed retail establishment, in over-the-counter sales transactions.

(E) By means of loosies as defined in § 118.02.

(F) 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.

(H) Liquid packaging. No person shall sell or offer to sell any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device, in packaging that is not child-resistant. Upon request by the

city, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

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

(Am. Ord. 720, passed 1-3-13) Penalty, see § 118.99

(Am. Ord. 720, passed 1-3-13) Penalty, see § 118.99

§ 118.08 RESPONSIBILITY.

All licensees under this chapter shall be responsible for the actions of their employees in regard to the sale of licensed products 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.

(Am. Ord. 720, passed 1-3-13) Penalty, see § 118.99

§ 118.09 COMPLIANCE CHECKS AND INSPECTIONS.

(A) All licensed premises must be open to inspection by authorized city officials or their designees during regular business hours.

(B) From time to time, but at least [twice] per year, the city will conduct compliance checks to ensure compliance with all provisions of this ordinance.

(C) In accordance with state law, the city will conduct a compliance check that involves the participation of a person at least 17 years of age, but under the age of 21 to enter the licensed premises to attempt to purchase licensed products. Prior written consent from a parent or guardian is required for any person under the age of 18 to participate in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel.

(Am. Ord. 720, passed 1-3-13) Penalty, see § 118.99

§ 118.10 OTHER PROHIBITED ACTS

Unless otherwise provided, the following acts are an administrative violation of this chapter:

(A) *Prohibited furnishing procurement.* It is a violation of this chapter for any person 21 years of age or older to purchase or otherwise obtain any licensed product on behalf of a person under the age of 21. It is also a violation for any person 21 years of age and older to coerce or attempt to coerce a person under the age of 21 to purchase or attempt to purchase any licensed product

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Use of false identification. It shall be a violation of this chapter for any person to use any form of a false 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.

(Am. Ord. 720, passed 1-3-13) Penalty, see § 118.99

§ 118.11 EXCEPTIONS AND DEFENSES.

- (A) Religious, spiritual, or cultural ceremonies or practices. Nothing in this chapter shall prevent the providing of tobacco or tobacco-related devices to any person as part of a lawfully recognized religious, spiritual or cultural ceremony.
- (B) Reasonable reliance. 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.

(Am. Ord. 720, passed 1-3-13)

§ 118.99 VIOLATIONS AND PENALTY.

(A) Violations.

(1) *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.

(2) *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.

(3) *Hearing Officer.* The city official designated by the City Council shall serve as the hearing officer.

(4) *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 division (B) of this section, shall be recorded in writing, a copy of which shall be provided to the accused 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 violator.

(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 of the date of the decision.

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

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

(B) Administrative penalties.

(1) *Licenseses*. Any licensee found to have violated this chapter, or whose employee shall have violated this chapter, shall be charged an administrative fine as follows:

a. First violation: \$500;

b. Second violation within a 36-month period of the first violation: \$750;

c. Third offense within a 36-month period: \$1000 and a minimum of a seven (7) day suspension with possible revocation;

d. Fourth violation within a 36-month period: \$1000 and a minimum 30- day suspension and possible revocation.

(2) *Other individuals*. Other individuals, other than persons under the age of 21 regulated by division (B)(3) of this section, found to be in violation of this chapter shall be charged an administrative fee of \$50.

(3) *Persons under the age of 21..* Persons under the age of 21 who use a false identification to purchase or attempt to purchase licensed products may only be subject to non-criminal, non-monetary civil penalties or remedies such as tobacco-related education classes, diversion programs, community services, or another non-monetary, civil penalty that the city determines to be appropriate. The City Council will consult with educators, parents, guardians, persons under the age of 21, public health officials, court personnel, and other interested parties to determine an appropriate remedy for persons under the age of 21 in the city in the best interest of the underage person. The remedies for persons under 21 who use a false identification to purchase or attempt to purchase licensed products may be established by ordinance and amended from time to time.

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

(5) *Statutory penalties*. If the administrative penalties authorized to be imposed by M.S. § 461.12, as it may be amended from time to time, differ from those established in this section, then the higher or more stringent penalties shall prevail.

(Am. Ord. 720, passed 1-3-13)