

CHAPTER 22. LICENSING; BUSINESSES & SERVICES

ARTICLE X. Tobacco & Tobacco Related Products

*State law reference--Municipal licensing and regulation of retail sales of tobacco, Minn. Stats. § 461.12,
subd. 1.

Section 22-481. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Compliance checks means 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 ordinance and state laws. Compliance checks shall involve the use of minors as authorized by this article. 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.

Minor means any person under the age of 18 years.

Retail establishment means 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.

Self-service merchandising means 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 assistance or intervention of the licensee or the licensee's employee.

Tobacco or tobacco products mean 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 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 such manner as to be suitable for chewing, sniffing, smoking, smoking in a pipe, rolling paper, or other tobacco-related device.

Tobacco related devices means any tobacco product 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 means 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, unless the machine can be controlled by an electronic device by an employee of the business.

Section 22-482. Responsibility of licensee.

All licensees under this article 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 such item by an employee shall be considered a sale by the license holder.

Section 22-483. Penalties/revocation or suspension of license.

A violation of any provision of this article shall constitute a misdemeanor, unless otherwise specified by other federal or state laws or regulations. A violation of any provision of this article, or a violation of any provision of Minn. Stats. § 609.685, shall be cause for immediate revocation or suspension of the license by the city council. Any fee paid to the city for a license shall be forfeited upon revocation or suspension of the license.

Section 22-484. Administrative penalties.

- (a) *Notice.* Upon discovery of a suspected violation of any of the provisions of the article, 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 right to be heard on the charges.
- (b) *Hearings.* If a person accused of violating this article 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 city manager shall serve as the hearing officer.
- (d) *Decision.* If the hearing officer determines that a violation of this article has occurred, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed, 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, such findings shall be recorded and a copy provided to the acquitted accused violator.
- (e) *Appeals.* Appeals of any decision made by the hearing officer shall be filed with the clerk of the county district court.
- (f) *Misdemeanor prosecution.* Nothing in this section prohibits the city from seeking criminal prosecution for any alleged violation of this article. If the city elects to seek criminal prosecution, no administrative action or penalty shall be imposed.
- (g) *Continuing violations.* Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.
- (h) *Penalties.* Any licensee found to have violated this article, or whose employee shall have violated this article, shall be charged an administrative fee of \$75.00 for a first violation of this ordinance; \$200.00 for a second offense at the same licensed premises within a 24-month period; and \$250.00 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 days.

- (i) *Other individuals.* Other individuals, other than minors regulated by subsection (j) of this section, shall be charged an administrative fee of \$50.00.
- (j) *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 fee of \$25.00, participate in the juvenile metro program or engage in such other program as the city police department believes will be appropriate and effective.

Section 22-485. 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 their parents or guardians, minors over the age of 15 years to enter the licensed premise to attempt to purchase tobacco, tobacco products, or tobacco related devices. Minors used for the purpose of compliance checks shall be supervised by city law enforcement officers. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, or tobacco related devices when such 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 employee and shall produce any identification, if any exists, for which he 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 or regulation.

Section 22-486. Underage persons.

- (a) *Illegal sales.* It shall be a violation of this article 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 article for any minor to have in his possession any tobacco, tobacco product, or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check.
- (c) *Illegal use.* It shall be a violation of this article 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 article 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 ordinance for any person to purchase or otherwise obtain such 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 subdivision shall not apply to minors lawfully involved in a compliance check.
- (e) *Use of false identification.* It shall be a violation of this article for any minor to attempt to disguise his 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.

State law reference--Similar provisions, Minn. Stats. § 609.685.

Section 22-487.

Retail license.

- (a) No person shall directly or indirectly keep for retail sale, sell at retail either personally or through a vending machine, or otherwise dispose of any tobacco, tobacco product or tobacco related device in the city unless a license therefore shall first have been obtained. Each vending machine that dispenses tobacco products shall be individually licensed.
- (b) 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 business for which the license is sought, the location of the building and the part intended to be used by the applicant under such license, the kind or nature of business, and any additional information the city deems necessary. Upon the filing of such application with the city clerk, it shall be presented to the city council for consideration, and if granted by the council, a license shall be issued by the city clerk upon payment of the required fee.
- (c) The fees for licenses under this article shall be determined by the council. Each such license shall expire on December 31 next after its issuance. Licenses shall not be transferable from one person or entity to another, nor shall they be transferable from one premise to another premise.
- (d) Every license issued under this article shall be kept conspicuously posted about the place for which the license is issued and shall be exhibited to any person upon request.
- (e) The renewal of a license issued under this section shall be made 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.
- (f) The following shall be grounds for denying the issuance or renewal of a license under this article:
 - (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 24 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 such a license.
 - (6) The applicant has failed to pay any required application or licensing fees to the city.

Section 22-488. Vending machines.

No person shall sell or dispense any tobacco, tobacco product, or tobacco related device by means of a vending machine unless the vending machine is located in an area which does not permit unrestricted access to the vending machine by a minor. A violation of this section shall be cause for immediate license revocation.

Section 22-489. Self-service merchandising.

No person or entity shall offer for sale any tobacco, tobacco products, or tobacco related devices, by any means where the customer has access to such items without having to request the item from a licensee or a licensee's employee, and whereby there is not a physical exchange of the tobacco, tobacco product, or tobacco related device, between the licensee or his clerk and the customer. All tobacco, tobacco products, and tobacco related devices shall either be stored behind a counter or in an area not freely accessible to a customer, or in a case or in a storage unit not left open and accessible to the general public.

Section 22-490. Prohibited sales.

It shall be a violation of this article for any person to sell or offer to sell any tobacco, tobacco product, or tobacco related 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, 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.
- (4) 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.
- (5) 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

Sections 22-491 thru 22-499. Reserved.