

1104. TOBACCO AND RELATED PRODUCTS

1104.010 PURPOSE.

The City recognizes the public health hazards of exposure of individuals to secondhand smoke. This chapter is intended to regulate the sale, possession, and use of tobacco, tobacco products, and electronic and non-electronic delivery devices for the purpose of enforcing and furthering existing laws, to protect persons under the age of 21 and others against the serious effects associated with the use of tobacco, tobacco products, and related devices, to protect individuals from the hazards of secondhand smoke, and to further the official public policy of the State of Minnesota as stated in Minn. Stat. Sections 144.391 and 144.412.

§1104.020 DEFINITIONS.

1. *Underage Person.* Means any natural person who has not yet reached the age of 21 years.
2. *Smoking.* Means inhaling and/or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other non-electronic delivery device or product. This also includes holding the same, intended for inhalation.
3. *Tobacco or Tobacco Products.* Means 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 including but not limited to 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. (Ref. Ord. 23-08-2066, 8/22/2023)
4. *Tobacco-Related Devices.* Means cigarette papers or pipes for smoking or other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or inhalation of aerosol or vapor of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately. (Ref. Ord. 23-08-2066, 8/22/2023)
5. *Electronic Delivery Device.* Means any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through inhalation of aerosol or vapor from the product. The term includes, but is not limited to, devices manufactured, marketed, or sold as electronic cigarettes, electronic cigars, electronic pipe, vape pens, modes, tank systems, or under any other product name or descriptor. The term also includes any component part of such a product

whether or not marketed or sold separately. The term does not include drugs, devices, or combination products, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, that are authorized for sale by the United States Food and Drug Administration. (Ref. Ord. 23-08-2066, 8/22/2023)

6. *Loosies*. Means single cigarettes, cigars, and any other licensed products that have been removed from their original retail packaging and offered for sale. The term does not include premium cigars that are hand-constructed, have a wrapper made entirely from whole tobacco leaf, and have a filler and binder made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor. (Ref. Ord. 23-08-2066, 8/22/2023)
7. *Tobacco Products Shop*. Means an existing or proposed retail establishment that:
 - (a) Has an entrance door opening directly to the outside;
 - (b) Prohibits persons under the age of 21 years from entering the establishment at any time; and
 - (c) Derives more than 90 percent of its gross revenue from the sale of tobacco, tobacco-related devices, electronic delivery devices, edible cannabinoid products under Minnesota Statutes, section 151.72, or any product requiring a license to sell at retail from the Office of Cannabis Management under Minnesota Statutes, chapter 342, and in which the sale of other products is merely incidental.

The term does not include a tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license. (Ref. Ord. 23-08-2066, 8/22/2023)

§1104.030 LICENSE REQUIRED.

1. *Generally*.
 - a. *Required*. No person may directly or indirectly or by means of any device keep for retail sale, sell at retail, offer to sell or otherwise dispose of any tobacco products, tobacco-related devices, or electronic delivery devices at any place in the City without first having obtained a license from the City to do so.
 - b. *Limit*. The maximum number of licenses issued by the City in any year to a retail establishing qualifying as a tobacco products shop under this chapter is limited to ten (10), except that any tobacco products shop holding a valid license as of July 1, 2023 is permitted to retain and renew said license. If the maximum number of licenses has already been issued, a licensee that allows its license to expire or has its license revoked shall not be eligible for a new license. Persons desiring to apply for a license may be placed on a waiting list and be eligible to apply on a first-come, first-serve basis once the number of issued licenses falls below the maximum number allowed.

Notwithstanding the maximum number of allowed licenses, an applicant who purchases a tobacco products shop holding a current license shall be allowed to apply for and obtain, if eligible, a new license for the business location provided it is obtained within the same license year as the current license. (Ref. Ord. 23-08-2066, 8/22/2023)

2. *Specifically.*

- a. *Application.* An application for a license to sell tobacco products, tobacco-related devices, or electronic 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 consideration. If the City Clerk determines that the application is incomplete, the City Clerk shall provide the applicant with notice of the information necessary to make the application complete.
- b. *Action.* Upon receipt of a completed application, the City Clerk shall forward the application to the police department for investigation. The police department shall conduct an investigation of the applicant and application, the results of which shall be provided to the City Council. The City Council may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any further investigation it may deem necessary. If the City Council approves the license, the City Clerk shall issue the license to the applicant.
- c. *Term.* All licenses issued under this chapter shall expire on March 31 of each calendar year, unless sooner revoked, suspended or forfeited.
- d. *Fees.* No license shall be issued under this chapter until the appropriate license fee has been paid in full. The fee for a license under this chapter shall be established by the City Council as amended from time to time.
- e. *Smoking.* Smoking shall not be permitted in and no person shall smoke in a public place as defined by Minn. Stat. Section 144.413, Subd.2, at a public meeting, in a place of employment, or in public transportation, except as provided in Minn. Stat. Sections 144.414 and 144.4167, including sampling within a tobacco product shop, as defined in Minn. Stat. Section 144.4167, provided that:
 - i. The business does not have any tables, seating or wait staff.
 - ii. The sampling is limited to free samples of products.
 - iii. The sampling is incidental to the selling of the products and is not the primary activity on site.

- iv. There are no external signs on site promoting the sampling.
- f. *Sanctions for violation.* Violators of this chapter shall be guilty of a misdemeanor.
- g. *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.
- h. *Display.* All licenses shall be posted and displayed in plain view of the general public on the licensed premises.
- i. *Responsibility.* All licensees under this chapter shall be responsible for the actions of their employees in regard to the sale of tobacco products, tobacco-related devices, or electronic delivery devices on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder.
- j. *Renewals.* The renewal of a license issued under this article shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days prior to the expiration of the current license. The license holder is not entitled to an automatic renewal of the license.
- k. *Revocation or Suspension.* Any license issued under this chapter may be revoked or suspended by the City Council for a violation of federal or state tobacco laws, any provision of this chapter, or a provision of this Code related to the licensee's business operations, provided the licensee has been given a reasonable notice and an opportunity to be heard. The City Council may establish and impose administrative penalties for violating applicable state laws or provisions of this chapter, provided such penalties are not less than the minimums required by Minnesota Statutes, Section 461.12. (Ref. Ord. 23-08-2066, 8/22/2023)

§1104.040 BASIS FOR DENIAL OF A LICENSE. The following shall be grounds for denying the issuance of or renewal of a license under this Section. The following list is not exhaustive or exclusive:

1. The applicant is under the age of 21.
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 products, tobacco-related devices, or electronic delivery devices.
3. The applicant has had a license to sell tobacco products, tobacco-related devices, or electronic delivery devices revoked within the preceding 12 months of the date of application.
4. The applicant provides false or misleading information.

5. The applicant or license holder has been found by the City Council to have violated this Code within the previous 12 months, or has outstanding fines, penalties, charges or property taxes owed to the City.
6. The applicant is prohibited by federal or state law, local ordinance, or other regulation, from holding such a license.
7. 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 article.

§1104.050 PROHIBITED SALES. It shall be a violation of this article for any person to give away, dispense, sell or offer to sell any tobacco product or delivery device:

1. To an underage person.
2. By a vending machine.
3. By self-service, or in open displays which are accessible to the public without the assistance or intervention of a store employee.
4. As a single or individually packaged item, such as cigarillos, or anything for less than \$2.00 before tax. Packs or Cartons or other packaging containing more than 3 items and individual cigars with a retail price, before sales tax, of more than \$2.00, shall not be considered individually packaged.
5. By a mobile business, including but not limited to motorized vehicles, moveable sales kiosks or trailers. Licenses shall be issued to fixed location businesses only.
6. If the tobacco products, tobacco-related devices, or electronic delivery devices contain opium, morphine, jimson weed, belladonna, strychnos, cocaine, marijuana, cannabinoid, tetrahydrocannabinol, or other delirious, hallucinogenic, toxic, or controlled substances except nicotine.
7. To any other person, in any other manner or form prohibited by federal or state law or regulation, or by local ordinance.
8. As a looseie.

§1104.060 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, an unannounced compliance check, involving the use of persons who are at least 17 years of age but not yet 21 years of age, with written parental consent for persons under the age of 18, shall be conducted at each licensed retail establishment, subject to police department protocols.

§1104.080 EXCEPTIONS AND DEFENSES. Nothing in this chapter shall prevent the providing of a tobacco product, tobacco-related devices, or electronic delivery device, to an underage person 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 upon proof of age.

§1104.090 SIGNAGE AND AGE VERIFICATION REQUIRED: (Ref. Ord. 23-08-2066, 08-22-2023)

1. *Signage.* At each location where tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are sold, the licensee shall display a sign in plain view to provide public notice that selling any of these products to any person under the age of 21 is illegal and subject to penalties. The notice shall be placed in a conspicuous location in the licensed establishment and shall be readily visible to any person who is purchasing or attempting to purchase these products. The sign shall provide notice that all persons responsible for selling these products must verify, by means of photographic identification containing the bearer's date of birth, the age of any person under 30 years of age.
2. *Age verification.* At each location where tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are sold, the licensee shall verify, by means of government-issued photographic identification containing the bearer's date of birth, that the purchaser or person attempting to make the purchase is at least 21 years of age. Verification is not required if the purchaser or person attempting to make the purchase is 30 years of age or older. It shall not constitute a defense to a violation of this subdivision that the person appeared to be 30 years of age or older.

§1104.100 SEVERABILITY AND SAVINGS. If any section or portion of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as invalidation or affect the validity and enforceability of any other section or provision of this ordinance.

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