1104. TOBACCO AND RELATED PRODUCTS

1104.010 PURPOSE.

The City recognizes the public health hazards of exposure of individuals to secondhand smoke. This ordinance 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 minors 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. Minor means any natural person who has not yet reached the age of 18 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 Products. Any substance, item, product or formulation of matter - including but not limited to cigars, cigarettes, pipe tobacco, chewing tobacco, sheesha, snuff, snus, gum and dissolvable packets - containing tobacco, that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product approved by the United States Food and Drug Administration for use as a medical treatment to reduce and eliminate nicotine or tobacco dependence that is being marketed and sold solely for such an approved purpose or lobelia dietary supplements as sold by a health food establishment that does not carry any other Nicotine or Tobacco Products or Delivery Devices.

4. Non-Electronic Delivery Device. Any substance, item, or product - including but not limited to pipes, rolling papers and cigarettes - that is designed or intended to be used in a manner which delivers, or enables the intake of tobacco into the human body.

5. Electronic Delivery Device. Any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking through the inhalation of vapor from the product, including, without limitation, e-cigarettes. Electronic Delivery Device shall include any component part of such a product whether or not sold separately. Electronic Delivery Device shall not include any product that has been approved or otherwise certified by the United States Food and Drug Administration for legal sales for use in tobacco cessation treatment or other medical purposes, and is being marketed and sold solely for that approved purpose.
§1104.030 LICENSE REQUIRED.

1. Generally. 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 or delivery devices at any place in the city without first having obtained a license from the City to do so.

2. Specifically.

a. Application. An application for a license to sell tobacco products and 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 Council for consideration. If the City Clerk determines that the application is incomplete, the 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 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 Council approves the license, the City Clerk shall issue the license to the applicant.

c. Term. All licenses issued under this ordinance shall expire on March 31 of each calendar year, unless sooner revoked, suspended or forfeited.

d. Fees. No license shall be issued under this ordinance until the appropriate license fee has been paid in full. The fee(s) for a license under this ordinance 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, 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 ordinance shall be guilty of a misdemeanor.

g. Transfers. All licenses issued under this ordinance 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 ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco products and 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 ordinance may be revoked or suspended by the City Council for a violation of any provision of this chapter if the licensee has been given a reasonable notice and an opportunity to be heard.

§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 a minor.

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 or delivery devices.

3. The applicant has had a license to sell tobacco products or 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 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 a minor.
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 or delivery devices contain opium, morphine, jimson weed, belladonna, strychnos, cocaine, marijuana, 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.

§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 minors, shall be conducted at each licensed retail establishment, subject to police department protocols.

§1104.080 EXCEPTIONS AND DEFENSES. Nothing in this ordinance shall prevent the providing of a tobacco product or delivery device to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this ordinance for a person to have reasonably relied upon proof of age.

§1104.090 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.

Revised 3/12/2014