

Section 1132 - Tobacco and Related Products
(Added, Ord. No. 96-08)

1132.01. Definitions. Where used in this section, the following terms have the following meanings:

- (a) "Self-service merchandising" means a method of displaying tobacco-related products so that they are accessible to the public without the intervention of an employee.
- (b) "Tobacco products" means cigarettes, cigars, cheroots, stogies, perique, granulated, plug-cut, ready, rubbed or other smoking tobacco; snuff, snuff flower, cavendish, plug and twist tobacco; fine cut or other chewing tobacco; shorts, refuse, scripts, clippings, cuttings, and sweepings of tobacco prepared in such a manner as to be suitable for chewing, sniffing or smoking in a pipe, rolling paper or other tobacco-related device. (Amended, Ord. No. 98-07)
- (c) "Vending machine" means any mechanical, electrical or electronic self-service device which, upon inserting money, tokens or any other form of payment, dispenses tobacco or tobacco related products for retail sale. (Amended, Ord. No. 98-07).
- (d) "Nicotine or Lobelia Delivery Products or other state regulated products" mean any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such 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 which is being marketed and sold solely for that approved purpose. (Added, Ord. 13-08).

1132.03. License required. No person shall directly, by coin machine, or otherwise, keep for retail sale, sell at retail, or otherwise dispose of, any cigarette, cigarette wrapper, tobacco or tobacco products, or any nicotine or lobelia delivery products or other state regulated tobacco products at any place in the city unless they have obtained a license therefore as provided herein. (Amended, Ord. no. 13-08)

1132.05. Application and issuance. Application for such license shall be made to the city clerk and shall state the full name and address of the applicant, the location of the building to be occupied by the applicant in the conduct of the business, the kind of business to be conducted, and such other information as the city clerk may require. The application shall be presented to the city council for its consideration, and if granted by the council, a license will be issued by the city clerk upon payment of the required fee.

1132.07. License fee. The fee for a license is set by Appendix B.

1132.09. Term. Licenses expire annually on December 31. Licenses are not transferable. License renewal is subject to the license provisions described in section 1005 Licensing Procedures. (Amended, Ord. No. 02-05)

1132.11. License displayed. The license must be kept conspicuously posted on the premises for which the license is issued and must be exhibited to any person upon request.

1132.13. Location. A license will not be issued for the sale of cigarettes at a movable place of business, or for the sale of cigarettes at more than one place of business.

1132.15. Prohibited acts.

- (a) No person shall sell, give away, or otherwise furnish any cigarette, cigarette paper, tobacco, or tobacco products or any nicotine or lobelia delivery products or other state regulated tobacco products to any person under the age of 18 years. (Amended, Ord. No. 13-08)
- (b) No person shall keep for sale or dispense any tobacco product containing opium, morphine, jimson weed, bella donna, strychnia, cocaine, marijuana, or any other controlled substance or deleterious or poisonous drug, except nicotine.
- (c) No person shall dispense any tobacco product through the use of a vending machine, unless the vending machine is operable only by activation of an electronic switch operated by an employee of an establishment before each sale.
- (d) Every licensee shall be responsible for the conduct of its employees while on the licensed premises and any sale or other disposition of tobacco products or any nicotine or lobelia delivery products or other state regulated tobacco products by an employee to a person under 18 years of age shall be considered an act of the licensee for purposes of imposing an administrative fine, license suspension, or revocation. (Amended, Ord. No. 13-01, Ord. No. 13-08)
- (e) Except for tobacco shops, all tobacco, tobacco products, and tobacco-related devices shall be stored behind the counter or other area not freely accessible to customers and no sales shall be made by means of self-service merchandising. For the purpose of this section, "tobacco shop or shops" shall mean a retail establishment devoted exclusively to the sale of tobacco, tobacco products and tobacco related devices. No person under the age of 18 shall be permitted in a tobacco shop unless accompanied by that person's parent or legal guardian. (Amended, Ord. No. 97-02, Sec. 1)

1132.17. Other illegal acts. Unless otherwise provided, the following acts shall be a violation of this section.

- (a) Illegal possession. It shall be a violation of this section for any minor to have in their possession any tobacco product or any nicotine or lobelia delivery products or other state regulated tobacco products. (Amended, Ord. No. 13-08)
- (b) Illegal use. It shall be a violation of this section for any minor to smoke, chew, sniff, or otherwise use any tobacco product or any nicotine or lobelia delivery products or other state regulated tobacco products. (Amended, Ord. No. 13-08)
- (c) Illegal procurement. It shall be a violation of this section for any minor to purchase or attempt to purchase or otherwise obtain any tobacco product or any nicotine or lobelia delivery products or other state regulated tobacco products, and it shall be a violation of this section for any person to purchase or otherwise obtain such items on behalf of a minor. (Amended, Ord. No. 13-08)
- (d) Use of false identification. It shall be a violation of this section for any minor to attempt to disguise their 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.
- (e) Illegal entrance to tobacco shop premises. No person under the age of 18 years shall enter the premises of a tobacco shop unless accompanied by that person's parent or legal guardian. (Added, Ord. No. 97-02, Sec. 1)

1132.19. Violations.

- (a) Misdemeanors. Any person who violates this section shall be guilty of a misdemeanor.
- (b) Administrative civil penalties; individuals. Any person who sells any tobacco product or any nicotine or lobelia delivery products or other state regulated tobacco products to a person under the age of 18 years is subject to an administrative penalty; and any person under the age of 18 who attempts to purchase a tobacco related product is subject to an administrative penalty. No penalty shall be imposed until the individual has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before the city manager or the city manager's designee. A decision that a violation has occurred shall be in writing. The city council may impose administrative penalties as follows:

First violation: The city council may impose a civil fine of not less than \$50 nor more than \$500.

Second violation within 12 months: The city council may impose a civil fine of not less than \$50 nor more than \$750.

Third violation within 12 months: The city council may impose a civil fine of not less than \$50 nor more than \$1,000. (Amended, Ord. No. 98-07, Ord. No. 13-08)

- (c) Administrative civil penalties; licensee. If a licensee or an employee of a licensee is found to have sold tobacco or any nicotine or lobelia delivery products or other state regulated tobacco products to a person under the age of 18 years, the licensee shall be subject to an administrative penalty as follows:

First violation: The city council shall impose a civil fine of not less than \$75 nor more than \$500. The licensee's license may also be suspended for a period of not more than ten days.

Second violation within 24 months: The city council shall impose a civil fine of not less than \$200 nor more than \$750. The licensee's license shall also be suspended for a period of not more than 20 days.

Third violation within 24 months: The city council shall impose a civil fine of not less than \$250 nor more than \$1,000. The licensee's license shall also be suspended for a period of not less than seven nor more than 30 days.

No suspension or penalty shall take effect until the licensee has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before the city manager or the city manager's designee. A decision that a violation has occurred shall be in writing. (Amended, Ord. No. 98-07, Ord. No. 13-08)

- (d) Defense. It is a defense to the charge of selling tobacco or any nicotine or lobelia delivery products or other state regulated tobacco products to a person under the age of 18 years, that the licensee or individual, in making the sale, reasonably and in good faith relied upon representation of proof of age described in Minnesota Statutes, section 340A.503, subdivision 6, paragraph(a). (Amended, Ord. No. 13-08)
- (e) Exemption. A person, no younger than 15 and no older than 17, may be enlisted to assist in the tests of compliance, provided that written consent from the person's parent or guardian has been obtained and that the person shall at all times act only under the direct supervision of a responsible adult for training, education, research, or enforcement purposes. A person who purchases or attempts to purchase tobacco products or any nicotine or lobelia delivery products or other state regulated tobacco products while in this capacity is exempt from the penalties imposed by subdivisions (a) and (b) above. (Amended Ord. No. 13-08)
- (f) Revocation. A license may be revoked or suspended by the city council for a violation of the provisions of this subsection after notice and hearing.