

## Chapter 42 - HEALTH AND SANITATION

### Footnotes:

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**Cross reference**— Animals, ch. 14; buildings and building regulations, ch. 18; immediate health, welfare and safety hazards for residential maintenance code, § 18-343; ~~[health and safety at public]~~ swimming pools, ~~[§] ch.18[-454]~~; environment, ch. 34; manufactured homes and trailers, ch. 46; solid waste, ch. 62; utilities, ch. 86.

**State Law reference**— Health, Minn. Stat. chs. 144—159, et seq., as amended from time to time.

### ARTICLE I. - IN GENERAL

#### Sec. 42-1. - Board of health.

Pursuant to Minn. Stat. ch. 145A, a board of health is hereby established in and for the city, with the powers, rights, duties and functions as provided in such statutes.

(Code 1963, § 11-1; Code 1980, § 11-1)

**Cross reference**— Boards and commissions, § 2-241 et seq.

**State Law reference**— Local board of health authorized, Minn. Stat. § 145A.03, subd. 1; minimum number of members of local board of health, Minn. Stat. § 145A.03, subd. 4.

Secs. 42-~~2~~—42-30. - Reserved.

### ARTICLE II. - TOBACCO

#### DIVISION 1. - GENERALLY

#### Sec. 42-31. - Purpose of article.

This article shall be intended to regulate the sale, possession, and use of tobacco, tobacco products, and tobacco-related devices for the purpose of enforcing and further existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, and tobacco-related devices, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in Minn. Stat. § 144.391.

(Code 1980, § 15-100; Ord. No. 97-1683, 12-4-1997)

**State Law reference— Minnesota Clean Indoor Air Act, Minn. Stat. § 144.411 et seq.; ~~[cigarette licenses]~~municipal license of tobacco, tobacco-related devices, and similar products Minn. Stat. § 461.12 et seq.; sale of tobacco to ~~[underage persons]~~ children, Minn. Stat. § 609.685 et seq.~~[- local regulation of tobacco sales, Minn. Stat. §§ 462.12, subd. 1, 461.19, 609.685, subd. 4.]~~ as amended from time to time.**

Sec. 42-32. - Definitions ~~[and interpretations]~~.

Except as ~~[may]~~ otherwise ~~[be]~~ provided or clearly implied by context, all terms shall be given their commonly accepted definitions. ~~[The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice-versa. The term "shall" means mandatory and the term "may" means permissive.]~~ For the purpose of this article, ~~[T]he following definitions [terms] shall apply unless the context clearly indicates or requires a different meaning [have the definitions given to them]:~~

*Child-resistant packaging* means 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.

*Cigars* means any roll of tobacco that is wrapped in tobacco leaf or in any substance containing tobacco, with or without a tip or mouthpiece, that is not a cigarette as defined in Minn. Stat. § 297F.01, subd. 3 as amended from time to time.

*Compliance checks* means the system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, ~~[and]~~ tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices are following and complying with the requirements of this article. 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, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices for educational, research and training purposes as authorized by state and federal laws. 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 tobacco, tobacco products, ~~[and]~~ tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices.

*Electronic delivery device and electronic cigarette* means 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 in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device

includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any product that has been approved or certified 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 marketed and sold for such an approved purpose.

Hookah shall mean a pipe with a long, flexible tube by which the smoke is drawn through a jar of water and thus cooled for the use of tobacco or tobacco related products.

*Individually packaged* means the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not be limited to, single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this article shall not be considered individually packaged.

Indoor area means all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent 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* means the common term used to refer to a single or individually packaged cigarette or any other tobacco product that has been removed from its packaging and sold individually. The term "loosies" does not include individual cigars with a retail price, before any sales taxes, of more than \$2.00 per cigar.

*Minor* means any natural person who has not yet reached the age of 18 years.

*Moveable place of business* means any form of business operated out of a truck, van, automobile, kiosk, trailer or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

Nicotine or lobelia delivery devices means any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a 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 is being marketed and sold solely for that approved purpose.

Public place means any enclosed, indoor area used by the general public, including, but not limited to, restaurants; bars; any other food or liquor establishment; retail and other commercial establishments; educational facilities; hospitals; nursing homes; auditoriums; arenas; meeting rooms; waiting rooms; and common areas of rental dwellings.

Retail establishment means any place of business where tobacco, tobacco products, [ø] tobacco-related devices, electronic delivery device or nicotine or lobelia delivery devices are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, [~~and~~] restaurants, and drug stores.

Sale means any transfer of goods for money, trade, barter, or other consideration.

Sampling means the lighting of tobacco, tobacco products, tobacco-related devices or the activation of and inhaling of vapor from electronic cigarettes in a retail establishment by a customer or potential customer for the purpose of sampling the product or device before a purchase

Self-service merchandising means open displays of tobacco, tobacco products, [ø] tobacco-related devices, electronic delivery device or nicotine or lobelia delivery devices in any manner where any person shall have access to the tobacco, tobacco products, [ø] tobacco-related devices, electronic delivery device or nicotine or lobelia delivery devices, 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 tobacco, tobacco product, [ø] tobacco-related devices, electronic delivery device or nicotine or lobelia delivery devices between the customer and the licensee or employee. Self-service [~~merchandising shall not include vending machines~~] sales are interpreted as being any sale where there is not an actual physical exchange of the product between the clerk and the customer.

Smoking means inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product or exhaling vapor from any electronic delivery device, such as vaping. Smoking also includes carrying a lighted or heated cigar, cigarette, pipe, hookah or any other lighted or heated tobacco or plant product intended for inhalation.

Smoking lounge means a tobacco products shop which allows customers to be seated.

~~[Tobacco and tobacco related products means cigarettes; cigars; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; Cavendish; plug and twist tobacco; fine cut and~~

~~other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or other tobacco-related devices, and any products 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.]~~

Tobacco or tobacco related products includes 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, including by vaping, or any component, part, or accessory of a tobacco product; cigars; pipe tobacco, 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; dipping tobaccos; 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.

Tobacco products shop means a retail establishment with an entrance door opening directly to the outside that derives more than ninety percent (90%) of its gross revenue from the sale of tobacco, tobacco related products, tobacco related devices and in which the sale of other products is merely incidental. "Tobacco products shop" does not include a tobacco products department or section of any individual business establishment with any type of food, liquor, or restaurant license.

Tobacco-related devices [means] includes any tobacco product as well as a pipe, rolling papers, ashtray, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking or vaping of [cigarette papers, pipes or other devices which are or could be used for smoking or inhaling] tobacco or tobacco related products.

Vapor lounge means a vapor products shop which allows customers to be seated.

Vapor products shop means a retail establishment with an entrance door opening directly to the outside that derives more than ninety percent (90%) of its gross revenue from the sale of electronic delivery devices, electronic cigarettes and related products and in which the sale of other products is merely incidental. "Vapor products shop" does not include a vapor products department or section of any individual business establishment with any type of food, liquor, or restaurant license.

*Vending machines* 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.

(Code 1980, § 15-101; Ord. No. 97-1683, 12-4-1997; Ord. No. 13-2273, 11-7-2013)

**Cross reference**— Definitions generally, [§] Chapter 1-2.

Sec. 42-33. - Criminal violations.

(a) *Generally*. Violations of this article shall be misdemeanors.

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

(Code 1980, § 15-109.2; Ord. No. 97-1683, 12-4-1997; Ord. No. 98-1702, 3-5-1998)

Sec. 42-34. – [~~Administrative penalties~~]-Violations and penalty.

[~~The administrative procedures set forth by state law are hereby incorporated in this article.~~

~~(1) *Licensees*. Any licensee found to have violated this article, or whose employee shall have violated this article shall be charged an administrative fine of \$75.00 for a first violation of this article; \$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.~~

~~(2) *Other individuals*. Other individuals, other than minors found to be in violation of this article shall be charged an administrative fee of \$50.00.~~

~~(3) *Minors*. Provisions of Minn. Stat. § 461.12, subd. 4, are hereby incorporated in this article.]~~

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

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

(c) *Administrative penalties*.

(1) Licensees. Any licensee found to have violated this article, or whose employee shall have violated this article, shall be charged an administrative fine of \$75 for a first violation of this article; \$200 for a second offense at the same licensed premises within a 24-month period; and \$250 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 consecutive days.

(2) Other individuals. Other individuals, other than minors regulated by division (C)(3) of this section, found to be in violation of this article shall be charged an administrative fine of \$50.

(3) Minors. Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices, shall be subject to an administrative fine, or may be subject to tobacco-related education classes, diversion programs, community services, or another penalty that the city believes will be appropriate and effective. The administrative fine or other penalty shall be established by City Council ordinance upon the City Council's consultation with interested parties of the courts, educators, parents and children to determine an appropriate penalty for minors in the city. This administrative fine or other penalty may also be established from time to time by the Ordinance Establishing Fees and Charges, as it may be amended from time to time.

(4) Statutory penalties. If the administrative penalties authorized to be imposed by Minn. Stat. § 461.12, as it may be amended from time to time, differ from those established in this section, then the statutory penalties shall prevail.

(Code 1980, § 15-109.3; Ord. No. 97-1683, 12-4-1997; Ord. No. 98-1702, 3-5-1998)

**State Law reference**— Administrative penalties, Minn. Stat. § 461.12, subs. 2, 3.

(d) Administrative violations.

(1) Notice. A person violating this article may be issued, either personally or by mail, an administrative citation that sets forth the alleged violation and that informs the alleged violator of his or her right to a hearing on the matter. The citation shall provide notice that a hearing must be requested within ten (10) business days of receipt and that hearing rights shall be terminated if a hearing is not promptly requested. The citation shall provide information on how and where a hearing may be requested, including a contact address and phone number.

(2) Hearings.

(a) Upon issuance of a citation, a person accused of violating this article may request in writing a hearing on the matter. Hearing requests must be made within ten (10) business days of the issuance of the citation and delivered to the city clerk or other designated city officer. Failure to request a hearing within ten (10) business days of the issuance of the citation will terminate the person's right to a hearing.

(b) The city clerk or other designated city officer shall set the time and place for the hearing. Written notice of the hearing time and place shall be mailed or delivered to the accused violator at least ten (10) business days prior to the hearing.

(3) *Hearing Officer.* The city official designated by the City Council shall serve as the hearing officer. The hearing officer must be an impartial employee of the city or an impartial person retained by the city to conduct the hearing.

(4) *Decision.*

(a) A decision shall be issued by the hearing officer within ten (10) business days. If the hearing officer determines that a violation of this article did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under division of this section, shall be recorded in writing, a copy of which shall be provided to the city and the accused violator by in person delivery or mail as soon as practicable 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 city and the acquitted accused violator by in person delivery or mail as soon as practicable.

(b) *Costs.* If the citation is upheld by the hearing officer, the city's actual expenses in holding the hearing up to a maximum of \$1,000.00 shall be paid by the person requesting the hearing.

(c) The decision of the hearing officer is final.

(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 ten (10) business days.

Sec. 42-35. - Severability [~~and savings clause~~].

If any section or [~~portion~~] provision of this article is held [~~shall be found unconstitutional or otherwise~~] invalid [~~or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation or effect the validity and enforceability of any other section or provision of this article~~], such invalidity shall not affect other sections or provisions which can be given force and effect without the invalidated section or provision.

(Code 1980, § 15-109.5; Ord. No. 97-1683, 12-4-1997; Ord. No. 98-1702, 3-5-1998)

Sec. 42-36. – Exceptions and defenses.

- ~~(a) Notwithstanding other provisions in this article, an Indian may furnish tobacco to an Indian under the age of 18 years if the tobacco is furnished as part of a traditional Indian spiritual or cultural ceremony. For purposes of this subsection, an Indian is a person who is a member of an Indian tribe as defined in Minn. Stat. § 260.755, subd. 12.~~
- ~~(b) The penalties in this article do not apply to a person under the age of 18 years who purchases or attempts to purchase tobacco or tobacco-related devices while under the direct supervision of a responsible adult for training, education, research, or enforcement purposes.~~

Nothing in this article shall prevent the providing of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices 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 article for a person to have reasonably relied on proof of age as described by state law.

(Code 1980, § 15-109.4; Ord. No. 97-1683, 12-4-1997; Ord. No. 98-1702, 3-5-1998)

**State Law reference**— Similar provisions, Minn. Stat. § 609.685, subd. 5.

Sec. 42-37. - ~~[Prohibited sales]~~ Prohibitions.

(a) 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 devices, electronic delivery device or nicotine or lobelia delivery devices:

- (1) To any person under the age of 18 years.

**State Law reference**— Sales to underage persons, Minn. Stat. § 609.685, subs. 1a, 2.

- (2) By means of any type of vending machine~~[, except as may otherwise be provided in this article].~~

- (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 premises in order to receive the tobacco, tobacco product, ~~[or]~~ electronic delivery device or nicotine or lobelia delivery device and whereby there is not a physical exchange of the tobacco, tobacco product, ~~[or]~~ electronic delivery device or

nicotine or lobelia delivery device between the licensee or the licensee's employee, and the customer.

(4) By means of loosies.

(5) Containing opium, morphine, jimson weed, belladonna, 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.

**State Law reference**— Controlled substances, Minn. Stat. ch. 152.

(6) 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.

(b) Smoking and Sampling.

(1) Except for exceptions listed in Minn. Stat. § 144.4167, smoking generally shall be prohibited and no person shall smoke in public places and places of work, including outdoor and bar areas of restaurants. Other than provided for in 144.4167, subd. 4, tobacco sampling, including sampling of electronic delivery devices and products used in electronic delivery devices, is specifically prohibited in the city.

(2) To ensure that tobacco smoke or electronic delivery device vapors do not enter public places, rental dwellings and places of work and in order to protect the persons entering such places from involuntarily exposure to smoke or vapor, smoking and the use of electronic delivery devices are prohibited within twenty-five (25) feet of entrances, exits, open windows and ventilation intakes of public places, rental dwellings and places of work. This prohibition does not apply to entrances and exits used solely in the event of an emergency and appropriately signed for that purpose.

(c) Smoking Lounges.

Smoking lounges, hookah lounges and vapor lounges are prohibited.

(d) Cigars.

No person shall sell, offer to sell or distribute cigars in an original package containing fewer than five cigars. This restriction shall not apply to any sales, offer to sell, or distribution of an original package consisting of one, two, three, four, or five cigars, provided that each original package has a retail sales price of at least \$2.60 per cigar and after any price promotions or discounts are taken into account and before the

imposition of sales tax, but excluding retail sales tax, and tobacco product shops only accessible to those 18 years or older.

(1) This section shall not apply to premium cigars as defined in Minnesota Statutes 297F.01 subd. 13a.

(2) The minimum pricing established in this section shall be adjusted periodically for inflation at least every three years.

(e) Penalty, see Sec. 42-34.

(Code 1980, § 15-105; Ord. No. 97-1683, 12-4-1997)

Sec. 42-38. – ~~[Vending machines.~~

~~It shall be unlawful for any person licensed under this article to allow the sale of tobacco, tobacco products, or tobacco-related devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.]~~

(Code 1980, § 15-106; Ord. No. 97-1683, 12-4-1997)

Sec. 42-39. - Self-service sales.

It shall be unlawful for a licensee under this article to allow the sale of tobacco, tobacco products, ~~[or] tobacco-related devices,~~ electronic delivery device or nicotine or lobelia delivery devices by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product, ~~[or] tobacco-related devices,~~ electronic delivery device or nicotine or lobelia delivery devices between the licensee or his or her clerk and the customer. All tobacco, tobacco products, ~~[and] tobacco-related devices,~~ electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling tobacco, tobacco products, ~~[or] tobacco-related devices,~~ electronic delivery device or nicotine or lobelia delivery devices at the time this article is adopted shall comply with this section within 60 days following the effective date of this article. A license holder who operates an establishment or fully enclosed portion of an establishment that sells at least 90 percent of its products in tobacco, or tobacco products, tobacco-related devices, electronic delivery devices or electronic cigarettes is exempt from the self-service merchandising provision if the license holder prohibits anyone under 18 years of age from entering the establishment or fully enclosed portion of an establishment and the license holder conspicuously

displays a notice prohibiting persons under 18 years of age from entering the establishment.

Penalty, see Sec. 42-34.

(Code 1980, § 15-107; Ord. No. 97-1683, 12-4-1997)

Sec. 42-40. - Responsibility.

All licensees under this article shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, [ø] tobacco-related devices, electronic delivery device or nicotine or lobelia delivery devices on the license premises, and the sale of such 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 article, state or federal law, or other applicable law or regulation.

(Code 1980, § 15-108; Ord. No. 97-1683, 12-4-1997)

Sec. 42-41. - Compliance checks and inspections.

All licensed premises shall be open to inspection by the police department 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 but less than 18 years, to enter the licensed premises to attempt to purchase tobacco, tobacco products, [ø] tobacco-related devices, electronic delivery device or nicotine or lobelia delivery devices. Minors used for the purpose of compliance checks shall be supervised by the police chief or other designated city personnel. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, [ø] tobacco-related devices, electronic delivery device or nicotine or lobelia delivery 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 or her employee and shall produce any identification, if any exists, for which he or she 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.

(Code 1980, § 15-109; Ord. No. 97-1683, 12-4-1997)

Sec. 42-42. - Other illegal acts.

Unless otherwise provided and in accordance with state statutes, the following acts shall be a violation of this article:

(1) *Illegal sales.* It shall be a violation for any person to sell or otherwise provide any tobacco, tobacco product, ~~[or] tobacco-related devices,~~ electronic delivery device or nicotine or lobelia delivery devices to any minor.

**State Law reference**— Similar provisions, Minn. Stat. § 609.685, subds. 1a, 2.

(2) *Illegal possession ~~[or use.~~ Except as otherwise provided, whoever possesses, smokes, chews, or otherwise ingests, purchases, or attempts to purchase, tobacco or tobacco-related devices and is under the age of 18 years is guilty of a petty misdemeanor.]* It shall be a violation of this article for any minor to have in his or her possession any tobacco, tobacco product, tobacco-related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery device. This division shall not apply to minors lawfully involved in a compliance check.

(3) *Illegal use.* It shall be a violation of this article for any minor to smoke, chew, sniff or otherwise use any tobacco, tobacco product, tobacco-related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery device.

**State Law reference**— Similar provisions, Minn. Stat. § 609.685, subd. 3.

~~(3-4)~~ *Illegal procurement.* It shall be a violation for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, ~~[or] tobacco-related devices,~~ electronic delivery device or nicotine or lobelia delivery devices, and it shall be a violation of this article 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 devices,~~ electronic delivery device or nicotine or lobelia delivery devices. This subsection shall not apply to minors lawfully involved in a compliance check.

~~(4-5)~~ *Use of false identification.* It shall be a violation for any minor to attempt to disguise his or her 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.

(Code 1980, § 15-109.1; Ord. No. 97-1683, 12-4-1997; Ord. No. 98-1702, 3-5-1998)

Secs. 42-43—42-60. - Reserved.

DIVISION 2. - LICENSE

Sec. 42-61. - Generally.

(a) License [R] required. No person shall sell or offer to sell any tobacco, tobacco products, ~~[or] tobacco-related devices,~~ electronic delivery device or nicotine or lobelia delivery devices without first having obtained a license to do so from the city. All licenses issued under this section 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.

(b) Application. An application for a license to sell tobacco, tobacco products, ~~[or] tobacco-related devices,~~ electronic delivery device or nicotine or lobelia 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, disclosure of any and all property seized by the Minnesota Department of Revenue in the last 10 years due to being considered contraband under state law and any additional information the city deems necessary. ~~[The city clerk shall forward the completed application to the council for action at its next regularly scheduled council meeting.]~~ Upon receipt of a completed application, the city clerk shall forward the application to the council for action at its next regularly scheduled council meeting. If the city clerk determines an application 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 council may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the council approves the license, the city clerk shall issue the license to the applicant. If the 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 council's decision.

(d) ~~[Expiration]~~ Term. All licenses issued under this section shall be valid for one calendar year and shall expire on December 31 of each year.

(e) Revocation or suspension. Any license issued under this article may be revoked or suspended as provided in sections 42-33 and 42-34.

(f) Transfers. All licenses issued under this article 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 without the prior approval of council.

(g) *Moveable place of business.* No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this article.

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

(i) *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. Within 60 days after employment, every person selling tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices shall receive training regarding the selling of such products. The cost of such training shall be the responsibility of the employee or the licensee. Documentation indicating proof of such training for all employees is required and shall be maintained on the premises of the licensed establishment and a copy shall be provided to the city upon request.

(j) *Issuance as privilege and not a right.* The issuance of a license issued under this section represents a privilege and not an absolute right of the applicant and does not entitle the holder to an automatic renewal of the license.

(k) *Smoking.* Except as allowed under Minn. Stat. § 144.414, 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 tobacco and tobacco related products generally is prohibited.

(l) *Liquid Packaging.* Per §461.20 the sale of any liquid, whether or not such liquid contains nicotine, that is intended for human consumption and use in an electronic delivery device, as defined in section § 609.685, subdivision 1, that is not contained in packaging that is child-resistant, is prohibited. All licensees under this chapter must ensure that any liquid intended for human consumption and use in an electronic delivery device must be sold in child-resistant packaging. Upon request, a licensee shall provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

(m) *Building, fire, and code compliance violations.* No license shall be issued for any tobacco, tobacco product, tobacco-related devices, electronic delivery device or nicotine or lobelia delivery devices if location of such license is not in compliance with State Building and Fire Codes.

(n) *Penalty, see Sec. 42-34.*

(Code 1980, § 15-102; Ord. No. 97-1683, 12-4-1997)

Sec. 42-62. - Basis for denial.

The following shall be grounds for denying the issuance or renewal of a license under this section but are not limited to the following:

(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 federal, state or local law, ordinance provision, or other regulation relating to tobacco or tobacco products, ~~[or] tobacco-related devices,~~ electronic delivery device or nicotine or lobelia delivery devices.

(3) The applicant has had a license to sell tobacco, tobacco products, ~~[or] tobacco-related devices,~~ electronic delivery device or nicotine or lobelia delivery devices denied or 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 local law, ordinance or other regulation, from holding such a license.

(6) Except as may otherwise be provided by law, the existence of any particular ground for denial, however, does not mean that the city must deny the license.

(7) If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery of the ineligibility of the applicant for the license under this article.

(8) Penalty, see Sec. 42-34.

(Code 1980, § 15-104; Ord. No. 97-1683, 12-4-1997)

Sec. 42-63. - Fees.

No license shall be issued under this section until the license fee is paid in full.

(Code 1980, § 15-103; Ord. No. 97-1683, 12-4-1997; Ord. No. 14-2276, 1-16-2014)

## ARTICLE X. - LICENSES FOR RENTAL DWELLINGS

Sec. 18-502. - Application.

- (a) Before any license shall be issued or renewed, the owner of the rental dwelling shall complete an application. The following persons shall be authorized to sign and submit the application:
- (1) If the owner is a natural person, by the owner thereof.
  - (2) If the owner is a corporation, by an officer thereof.
  - (3) If the owner is a partnership, by a partner thereof.
- (b) The application shall be made on a form prescribed by the city and shall include:
- (1) The name and address of the owner of the rental dwelling.
  - (2) The name and address of any operator or agent actively managing the rental dwelling.
  - (3) If the operator or agent is a business entity, the application shall include the names, telephone numbers and addresses of individuals who will be involved in such management, together with a description of the scope of services and manner of delivering these services by the manager.
  - (4) If the applicant is a corporation, the name and address of all officers.
  - (5) If the applicant is a partnership, the name and address of all partners.
  - (6) If the rental dwelling is being sold on a contract for deed, the name and address of the vendees.
  - (7) The legal address of the rental dwelling.
  - (8) Owner, agent or manager that notices of violation should be directed to pursuant to this article.
  - (9) Proof of smoking policy disclosure for rental dwelling residents as part of the rental agreement.

(Ord. No. 07-2122, 3-8-2007)