

Chapter 42 HEALTH AND SANITATION¹

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(s)—Minnesota Clean Indoor Air Act, Minn. Stat. § 144.411 et seq.; cigarette licenses, Minn. Stat. § 461.12 et seq.; sale of tobacco to underage persons, Minn. Stat. § 609.685; local regulation of tobacco sales, Minn. Stat. §§ 462.12, subd. 1, 461.19, 609.685, subd. 4.~~

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. The following terms shall have the definitions given to them:~~

¹Cross reference(s)—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 Article IX;~~ environment, ch. 34; manufactured homes and trailers, ch. 46; solid waste, ch. 62; utilities, ch. 86.

State law reference(s)—Health, Minn. Stat. chs. 144—159, et seq., 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 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 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.~~

~~*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.~~

~~*Loosies* means the common term used to refer to a single or individually packaged cigarette.~~

~~*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, 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.~~

~~*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.~~

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

~~*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. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco~~

product, or tobacco-related device between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

~~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-related devices~~ means cigarette papers, pipes or other devices which are or could be used for smoking or inhaling tobacco or tobacco related products.

~~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(s)—Definitions generally, § 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.

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.~~

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

~~State law reference(s)—Administrative penalties, Minn. Stat. § 461.12, subds. 2, 3.~~

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

~~If any section or portion of this article 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.~~

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

~~Sec. 42-36. Exceptions.~~

~~(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.~~

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

~~State law reference(s)—Similar provisions, Minn. Stat. § 609.685, subd. 5.~~

Sec. 42-37. 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.~~

~~State law reference(s)—Sales to underage persons, Minn. Stat. § 609.685, subds. 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 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) By means of loosies.~~

~~(5) Containing opium, morphine, jimpson 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.~~

~~State law reference(s)—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.~~

~~(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 to allow the sale of tobacco, tobacco products, or tobacco-related 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 the 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 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 at the time this article is adopted shall comply with this section within 60 days.~~

~~(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, or tobacco-related 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, or tobacco-related 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, 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.~~

~~(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 device to a minor.~~

~~State law reference(s)—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.~~

~~State law reference(s)—Similar provisions, Minn. Stat. § 609.685, subd. 3.~~

- ~~(3) *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 device, 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 device. This subsection shall not apply to minors lawfully involved in a compliance check.~~

- ~~(4) *Use of false identification.* It shall be a violation 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.~~

(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) *Required.* No person shall sell or offer to sell any tobacco, tobacco products, or tobacco-related device without first having obtained a license to do so from the city.~~
- ~~(b) *Application.* 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, 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.~~
- ~~(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 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.* All licenses issued 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.~~

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- (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.

~~(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:~~

- ~~(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.~~
- ~~(3) The applicant has had a license to sell tobacco, tobacco products, or tobacco-related devices 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.~~

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

Sec. 42-63. Fees.

~~No license shall be issued 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)~~

Sec. 42-31. Purpose of article.

Because the city recognizes that the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 21 violates both state and federal law, this ordinance is intended to regulate the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect youth and young adults against the serious health effects associated with use and initiation, and to further the official public policy of the state to prevent young people from starting to smoke, as stated in Minn. Stat. § 144.391, as it may be amended from time to time.

State law reference(s)—Minnesota Clean Indoor Air Act, Minn. Stat. § 144.411 et seq.; cigarette licenses, Minn. Stat. § 461.12 et seq.; sale of tobacco to underage persons, Minn. Stat. § 609.685; local regulation of tobacco sales, Minn. Stat. §§ 462.12, subd. 1, 461.19, 609.685, subd. 4.

Sec. 42-32. Definitions and interpretations.

Except as may otherwise be provided or clearly implied by context, all terms are given their commonly accepted definitions. For the purpose of this ordinance, the following definitions apply unless the context clearly indicates or requires a different meaning:

CHILD-RESISTANT PACKAGING. 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.

CIGAR. Any roll of tobacco that is wrapped in tobacco leaf or in any other substance containing tobacco, with or without a tip or mouthpiece, which is not a cigarette as defined in Minn. Stat. § 297F.01, subd. 3, as it may be amended from time to time.

COMPLIANCE CHECKS. The system the city uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this ordinance. COMPLIANCE CHECKS involve the use of persons under the age of 21 who purchase or attempt to purchase licensed products. COMPLIANCE CHECKS may also be conducted by the city or other units of government for educational, research, and training purposes or for investigating or enforcing federal, state, or local laws and regulations relating to licensed products.

ELECTRONIC DELIVERY DEVICE. Any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through the inhalation of aerosol or vapor from the product.

ELECTRONIC DELIVERY DEVICE includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems, or under any other product name or descriptor. ELECTRONIC DELIVERY DEVICE includes any component part of a product, whether or not marketed or sold separately. ELECTRONIC DELIVERY DEVICE does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.

FLAVORED PRODUCT. Any licensed product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the product, including, but not limited to, any taste or smell relating to chocolate, cocoa, menthol, mint, wintergreen, vanilla, honey, fruit, or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a licensed product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such products, that a product has or produces a taste or smell other than a taste or smell of tobacco will constitute presumptive evidence that the product is a flavored product.

IMITATION TOBACCO PRODUCT. Any edible non-tobacco product designed to resemble a tobacco product, or any non-edible tobacco product designed to resemble a tobacco product and intended to be used by children as a toy. IMITATION TOBACCO PRODUCT includes, but is not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling chewing tobacco, and shredded beef jerky in containers resembling tobacco snuff tins. IMITATION TOBACCO PRODUCT does not include electronic delivery devices or nicotine or lobelia delivery products.

INDOOR AREA. 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.

LICENSED PRODUCTS. The term that collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

LOOSIES. The common term used to refer to single cigarettes, cigars, and any other licensed products that have been removed from their original retail packaging and offered for sale.

LOOSIES 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.

MOVEABLE PLACE OF BUSINESS. Any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and that is not a fixed address or other permanent type of structure licensed for over-the-counter sales transactions.

NICOTINE OR LOBELIA DELIVERY PRODUCT. Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco or an electronic delivery device as defined in this section.

NICOTINE OR LOBELIA DELIVERY PRODUCT does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as "drugs," "devices," or "combination products," as defined in the Federal Food, Drug, and Cosmetic Act.

RETAIL ESTABLISHMENT. Any place of business where licensed products are available for sale to the general public. RETAIL ESTABLISHMENT includes but is not limited to grocery stores, tobacco products store, convenience stores, liquor stores, gasoline service stations, bars, and restaurants.

SALE. Any transfer of goods for money, trade, barter or other consideration.

SELF-SERVICE DISPLAY. The open display of licensed products in a retail establishment in any manner where any person has access to the licensed products without the assistance or intervention of the licensee or the licensee's employee and where a physical exchange of the licensed product from the licensee or the

licensee's employee to the customer is not required in order to access the licensed products.

SMOKING. Inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. SMOKING also includes carrying or using an activated electronic delivery device.

TOBACCO. 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 cigarettes; 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 does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as "drugs," "devices," or "combination products," as defined in the Federal Food, Drug, and Cosmetic Act.

TOBACCO PRODUCTS STORE means a retail establishment that has an entrance door opening directly to the outside and that derives or is expected to derive more than 90 percent of its gross revenue from the sale of tobacco, tobacco-related devices, and electronic delivery devices, but does not include a tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license.

TOBACCO-RELATED DEVICE. Any rolling papers, wraps, pipes, or other device intentionally designed or intended to be used with tobacco products. TOBACCO-RELATED DEVICE includes components of tobacco-related devices or tobacco products, which may be marketed or sold separately. TOBACCO-RELATED DEVICES may or may not contain tobacco.

VENDING MACHINE. Any mechanical, electric or electronic, or other type of device that dispenses licensed products upon the insertion of money, tokens, or other form of payment into or onto the device by the person seeking to purchase the licensed product.

Sec. 42-33. Criminal violations.

(a) Misdemeanor prosecution. Nothing in this section prohibits the city from seeking prosecution as a misdemeanor for an alleged second violation of this ordinance by a person 21 years of age or older within five years of a previous conviction under the ordinance.

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

Sec. 42-34. Violations and Administrative penalties.

(a) Violations.

(1) Notice. A person violating this ordinance may be issued, either personally or by mail, a citation from the city that sets forth the alleged violation and that informs the alleged violator of their right to a hearing on the matter and how and where a hearing may be requested, including a contact address and phone number.

(2) Hearings.

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

(bb) The City Clerk or other designated city officer will set the time and place for the hearing. Written notice of the hearing time and place will be mailed or delivered to the accused violator at least 10 business days prior to the hearing.

(3) Hearing Officer. The City Council will designate a hearing officer. The hearing officer will be an impartial employee of the city or an impartial person retained by the city to conduct the hearing.

(4) Decision. A decision will be issued by the hearing officer within 10 business days of the hearing. If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officer's reasons for finding a

violation and the penalty to be imposed, will be recorded in writing, a copy of which will be provided to the city and the accused violator by in-person delivery or mail as soon as practicable. If the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings will be recorded and a copy will be provided to the city and the acquitted accused violator by in-person delivery or mail as soon as practicable. The decision of the hearing officer is final, subject to an appeal as described in section 11, paragraph (A)(6) of this section.

(5) 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 must be paid by the person requesting the hearing.

(6) Appeals. Appeals of any decision made by the hearing officer must be filed in Anoka County district court within 10 business days of the date of the decision.

(b) Administrative penalties.

(1) Licensees. Any licensee cited for violating this ordinance, or whose employee has violated this ordinance, will be charged an administrative fine of \$300 for a first violation; \$600 for a second offense at the same licensed premises within a 36-month period; and \$1,000 for a third or subsequent offense at the same location within a 36-month period. Upon the third violation, the license will be suspended for a period of not less than 30 consecutive days and may be revoked. Upon a fourth violation within a 36-month period, the license will be revoked.

(2) Employees of licensees and other individuals. Individuals, other than persons under the age of 21 regulated by paragraph (B) (3) of this section, who are found to be in violation of this ordinance may be charged an administrative fine of \$50.

(3) Persons under the age of 21. Persons under the age of 21 who use a false identification to purchase or attempt to purchase licensed products may only be subject to noncriminal, non-monetary civil penalties or remedies such as tobacco-related education classes, diversion programs, community services, or another non-monetary, civil penalty that the city determines to be appropriate. The City Council will consult with educators, parents, guardians, persons under the age of 21, public health officials, court personnel, and other interested parties to determine an appropriate remedy for persons under the age of 21 in the city in the best interest of the underage person. The remedies for persons

under 21 who use a false identification to purchase or attempt to purchase licensed products may be established by ordinance and amended from time to time.

(4) Statutory penalties. If the administrative penalty for violations against licensed retailers under Section 11(B)(1) authorized to be imposed by Minn. Stat. § 461.12, as it may be amended from time to time, differ from that established in this section, then the higher penalty will prevail.

Sec. 42-35. Severability and savings clause.

If any section or provision of this ordinance is held invalid, such invalidity will not affect other sections or provisions that can be given force and effect without the invalidated section or provision.

Sec. 42-36. Exceptions and defenses.

(a) Religious, Spiritual, or Cultural Ceremonies or Practices. Nothing in this ordinance prevents the provision of tobacco or tobacco-related devices to any person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.

(b) Reasonable Reliance. It is an affirmative defense to a violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

Sec. 42-37. Prohibited sales.

(b) In general. No person shall sell or offer to sell any licensed product:

(1) By means of any type of vending machine.

(2) By means of loosies.

(3) 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. It is not the intention of this

provision to ban the sale of lawfully manufactured cigarettes or other products subject to this ordinance.

(4) By means of self-service display. All licensed products must be stored behind the sales counter, in a locked case, in a storage unit, or in another area not freely accessible to the general public. Any retailer selling licensed products at the time this ordinance is adopted must comply with this section within 90 days of the effective date of this ordinance.

(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.

(b) Legal age. No person shall sell any licensed product to any person under the age of 21.

(1) Age verification. Licensees must verify by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.

(2) Signage. Notice of the legal sales age, age verification requirement, and possible penalties for underage sales must be posted prominently and in plain view at all times at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the city, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.

(c) Cigars. No person shall sell or offer to sell:

(1) Any cigar unless it is within a package containing a minimum of five cigars; and

(2) Any package of cigars for a sales price of less than \$15.00 per package, after any discounts are applied and before sales taxes are imposed.

This provision does not prohibit the sale of a single cigar with a sales price of at least \$4.00, after any discounts are applied and before sales taxes are imposed.

(e) Imitation tobacco products. No person shall sell, offer to sell, or otherwise distribute any imitation tobacco products within the city.

(f) Liquid packaging. No person shall sell or offer to sell any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device, in packaging that is not child-resistant. Upon request by the city, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

Sec. 42-38. Vending machines.

Sec. 42-39. Self-service sales.

Sec. 42-40 38. Responsibility.

All licensees are responsible for the actions of their employees regarding the sale, offer to sell, and furnishing of licensed products on the licensed premises. The sale, offer to sell, or furnishing of any licensed product by an employee shall be considered an act of the licensee.

Sec. 42-41 39. Compliance checks and inspections.

All licensed premises must be open to inspection by law enforcement or other authorized city officials during regular business hours. From time to time, but at least once per year, the city will conduct compliance checks. In accordance with state law, the city will conduct a compliance check that involves the participation of a person at least 17 years of age, but under the age of 21 to enter the licensed premises to attempt to purchase licensed products. Prior written consent from a parent or guardian is required for any person under the age of 18 to participate in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel.

Sec. 42-42 40. Other illegal prohibited acts.

(a) Prohibited furnishing or procurement. It is a violation of this ordinance for any person 21 years of age or older to purchase or otherwise obtain any licensed product on behalf of a person under the age of 21. It is also a violation for any

person 21 years of age and older to coerce or attempt to coerce a person under the age of 21 to purchase or attempt to purchase any licensed product.

(b) Use of false identification. It is a violation of this ordinance for any person to use any form of false identification, whether the identification is that of another person or has been modified or tampered with to represent an age older than the actual age of the person using that identification.

Secs. 42-43 41—42-60. Reserved.

DIVISION 2. LICENSE

Sec. 42-61. Generally.

(a) License required. No person shall sell or offer to sell any licensed product without first having obtained a license to do so from the city.

(b) Application. An application for a license to sell licensed products must be made on a form provided by the city. The application must 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 will forward the application to the City Council for action at its next regularly scheduled meeting. If the City Clerk determines that an application is incomplete, it will be returned to the applicant with notice of the information necessary to make the application complete.

(c) Action. The City Council may approve or deny the application for a license, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary. If the City Council approves the application, the City Clerk will issue the license to the applicant. If the City Council denies the application, notice of the denial will be given to the applicant along with notice of the applicant's right to appeal the decision.

(d) Term. All licenses issued are valid for one calendar year from the date of issue.

(e) Revocation or suspension. Any license issued may be suspended or revoked following the procedures set forth in Section 11.

(f) Transfers. All licenses issued are valid only on the premises for which the license was issued and only for the person to whom the license was issued. The transfer of any license to another location or person is prohibited.

(g) Display. All licenses must be posted and displayed at all times in plain view of the general public in the retail establishment.

(h) Renewals. The renewal of a license issued under this ordinance will be handled in the same manner as the original application. The request for a renewal must be made at least 30 days, but no more than 60 days, before the expiration of the current license.

(i) Issuance as privilege and not a right. The issuance of a license is a privilege and does not entitle the license holder to an automatic renewal of the license.

(j) Instructional program. Licensees must complete and ensure that all employees complete a training program on the legal requirements related to the sale of licensed products and the possible consequences of license violations. Any training program must be pre-approved by the city. Licensees must maintain documentation demonstrating their compliance and must provide this documentation to the city at the time of renewal, or whenever requested to do so during the license term.

(k) Smoking prohibited. Smoking, including smoking for the purpose of the sampling of licensed products, is prohibited within the indoor area of any retail establishment licensed under this ordinance, except in a tobacco products store.

(l) Samples prohibited. No person shall distribute samples of any licensed product free of charge or at a nominal cost. The distribution of licensed products as a free donation is prohibited.

Sec. 42-62. Basis for denial.

(a) Grounds for denying the issuance or renewal of a license include, but are not limited to, the following:

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- (1) The applicant is under 21 years of age.
 - (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 licensed products.
 - (3) The applicant has had a license to sell licensed products suspended or revoked within the preceding 12 months of the date of application.
 - (4) The applicant fails to provide any of the information required on the licensing 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 a license.
 - (6) The business for which the license is requested is a moveable place of business. Only fixed-location retail establishments are eligible to be licensed.
- (b) If a license is mistakenly issued or renewed to a person, the city will revoke the license upon the discovery that the person was ineligible for the license under this ordinance. The city will provide the license holder with notice of the revocation, along with information on the right to appeal.

Sec. 42-63. Fees.

No license will be issued under this ordinance until the appropriate license fees are paid in full. The fees will be established by the city's fee schedule and may be amended from time to time.

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.

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- (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.