

CHAPTER 115: TOBACCO REGULATIONS

Section

- 115.01 Purpose and intent
- 115.02 Definitions and Interpretations
- 115.03 License
- 115.04 Fees
- 115.05 Basis for denial of license
- 115.06 Prohibited sales
- 115.07 Vending machines
- 115.08 Self-service sales
- 115.09 Responsibility
- 115.10 Compliance checks and inspections
- 115.11 Other illegal acts
- 115.12 Violations
- 115.99 Penalties

SECTION 115.01 PURPOSE AND INTENT.

This Ordinance shall be intended to regulate the sale, possession, and use of tobacco, tobacco products and tobacco related devices for the purpose of enforcing 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 of Minnesota in regard to preventing young people from starting to smoke as stated in Minnesota Statutes, Section 144.391.

SECTION 115.02 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:

Compliance Checks. “Compliance Checks” shall mean 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 State law through this Ordinance. Compliance checks shall involve the use of minors or persons under the age of 21 as authorized by state law through this Ordinance. Compliance Checks shall also mean the use of minors or persons under the age of 21 who attempt to purchase tobacco, tobacco products, and 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.

Electronic Delivery Device. "Electronic Delivery Device" shall mean 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 shall include any component part of such product whether or not sold separately. Electronic Delivery Device shall not include any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for use in tobacco cessation treatment, or other medical purposes, and is being marketed and sold solely for that approved purpose.

Individually Packaged. "Individually packaged" shall mean 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 subdivision shall not be considered individually packaged.

Licensed Products. "Licensed Products" shall mean any Tobacco, Tobacco-Related Device, Electronic Delivery Device, or Nicotine or Lobelia Delivery Product.

Loosies. "Loosies" shall mean single or individually packaged cigars or cigarettes, or any other licensed product that has been removed from its intended retail packaging and offered for sale. Loosies does not include individual cigars with a retail price, after any discounts are applied and before any sales taxes are imposed, of at least \$2.50 per cigar.

Minor. "Minor" shall mean any natural person who has not yet reached the age of eighteen years.

Moveable Place of Business. "Moveable Place of Business" shall refer to 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. "Retail Establishment" shall mean 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. A "sale" shall mean any transfer of goods for money, trade, barter, or other consideration.

Self-Service. "Self-Service" shall mean 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 or Tobacco Products. "Tobacco" or "Tobacco Products" shall mean any substance or item containing tobacco leaf, including but not limited to, cigarettes, cigars, pipe tobacco, snuff, fine cut or other chewing tobacco; any other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing, or smoking.

Tobacco Related Devices. "Tobacco related devices" shall mean any tobacco product as well as pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing or smoking of tobacco or tobacco product.

Vending Machine Sales. "Vending Machine" shall mean 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.

Youth-Oriented Facility. "Youth-Oriented Facility" shall mean any facility with residents, customers, visitors, or inhabitants of which 25 per cent or more are regularly under the age of 21 or that primarily sells, rents or offers services for products that are consumed or used primarily by persons under the age of 21. Youth-Oriented Facility includes, but is not limited to, schools, playgrounds, recreation centers and parks.

SECTION 115.03 LICENSE.

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, unless located within a town or a home rule charter or statutory city that has retained licensing authority under Minnesota Statutes 461.12, Subdivision 1.

(A) Application. An application for a license to sell tobacco, tobacco products, tobacco related devices or electronic delivery devices shall be made on a form provided by the city. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought and any additional information the city deems necessary. Upon receipt of a completed application and payment of a fee pursuant to Section 115.04, the City Clerk shall forward the application to the City Council for action at its next regularly scheduled Council meeting. If the City Clerk shall determine that an application is incomplete, the application shall be returned with notice of the information necessary to make the application complete. Any retail establishment that is located within 1,000 feet of a youth-oriented facility must provide financial records documenting its annual sales upon request of the City.

(B) Action. The City Council may either approve or deny the license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council shall approve the

license, the City Clerk shall issue the license to the applicant. If the City Council denies the license, the notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the decision.

(C) Term. All licenses issued under this Ordinance shall be valid for one calendar year from the date of issue.

(D) Revocation or Suspension. Any license issued under this Ordinance may be revoked or suspended as provided in the Violations and Penalties section of this Ordinance.

(E) Transfers. All licenses under this Ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the City Council.

(F) Moveable Place or Business. No license shall be issued to a moveable place of business. Only fixed retail establishments shall be eligible to be licensed under this Ordinance.

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

(H) 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 thirty days but no more than sixty days before the expiration of the current license. The issuance of a license issued under this Ordinance shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

SECTION 115.04 FEES.

No license shall be issued under this Ordinance until the appropriate license fee shall be paid in full. The fee for a license under this Ordinance shall be established by the City Council.

SECTION 115.05 BASIS FOR DENIAL OF LICENSE.

The following shall be grounds for denying the issuance or renewal of a license under this Ordinance; however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license. If a license is mistakenly issued or renewed to a person, it may be revoked upon the discovery that the person was ineligible for the license under this section.

(A) The applicant is under the age of twenty-one (21) years.

(B) The applicant has been convicted within the past five years of any violation of a Federal, State or local law, ordinance provision, or other regulation relating to

tobacco or tobacco products, tobacco related devices or electronic delivery devices.

(C) The applicant has had a license to sell tobacco, tobacco products, tobacco related devices or electronic delivery devices revoked within the preceding twelve months of the date of application.

(D) The applicant fails to provide any information required on the application or provides false or misleading information.

(E) The applicant is prohibited by Federal, State or other local law, ordinance, or other regulation from holding such a license.

(F) The applicant has failed to pay on a timely basis any administrative fine levied by the City.

(G) No license will be granted to any person or a retail establishment that derives more than 25% of its gross revenue from the sale of licensed products that is located within 1,000 feet of a youth-oriented facility, as measured by the shortest line from the property lot line of the space occupied or to be occupied by the proposed licensee to the nearest property lot line of a youth-oriented facility. This restriction does not apply to an existing license holder who has been licensed to sell licensed products in the same location before the date this section was enacted into law.

SECTION 115.06 PROHIBITED SALES.

It shall be a violation of this Ordinance for any person to sell or offer to sell any tobacco, tobacco product, tobacco related device or electronic delivery device:

(A) To any person under the age of twenty-one (21) years.

(B) By means of any type of vending machine, except as may otherwise be provided in this Ordinance.

(C) By means of self-service methods unless allowed under Section 115.08 of this Ordinance.

(D) 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.

(E) By means of Loosies as defined herein.

SECTION 115.07 VENDING MACHINES.

It shall be unlawful for any person licensed under this Ordinance to allow the sale of tobacco, tobacco products or tobacco related devices by the means of a vending machine unless persons under the age of 21 are at all times prohibited from entering the licensed establishment.

SECTION 115.08 SELF SERVICE SALES.

(A) No licensee shall offer for sale individually packaged tobacco or tobacco products in open displays which are accessible to the public without the intervention of a store employee.

(B) Cartons and other multipack units may be offered and sold through open displays accessible to the public.

(C) Section 115.08 (b) of this Ordinance will expire upon the effective date and implementation of Code of Federal Regulations, Title 21, Part 897.16(c).

(D) The self-service restrictions described in this section shall not apply to retail establishments which derive at least 90% of their revenue from tobacco and tobacco-related products and which cannot be entered at any time by persons younger than twenty-one (21) years of age.

SECTION 115.09 RESPONSIBILITY.

All licensees under this Ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, or tobacco related devices on the licensed 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 Ordinance, State or Federal law, or other applicable law or regulation.

SECTION 115.10 COMPLIANCE CHECKS AND INSPECTIONS.

All licensed premises shall be open to inspection by an 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 fifteen (15) years but less than eighteen (18) years, or persons between the ages of eighteen (18) to twenty (20) years to enter the licensed premise to attempt to purchase tobacco, tobacco products, or tobacco related devices. Such persons used for the purpose of compliance checks shall be trained and supervised by designated city personnel. Persons used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase, nor the unlawful possession of tobacco, tobacco products, or tobacco related devices when such items are obtained or attempted to be obtained as part of the compliance check. No person used in compliance checks shall attempt to use a false identification misrepresenting the person's age, and all persons lawfully engaged in a compliance check shall answer all questions about the person's age asked by the licensee or his/her employee and shall produce any identification, if any exists, for which he/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.

SECTION 115.11 OTHER ILLEGAL ACTS.

Unless otherwise provide, the following acts shall be a violation of this Ordinance:

(A) Illegal Sale. It shall be a violation of this Ordinance for any person to sell or otherwise provide any tobacco, tobacco product, tobacco related device or electronic delivery device to any person under the age of 21.

(B) Illegal Possession. It shall be a violation of this Ordinance for any person under the age of 18 to have in his/her possession any tobacco, tobacco product, tobacco related device or electronic delivery device. This subdivision shall not apply to persons lawfully involved in a compliance check.

(C) Illegal Use. It shall be a violation of this Ordinance for any person under the age of 18 to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, tobacco related device or electronic delivery device.

(D) Illegal Procurement. It shall be a violation of this Ordinance for a person under the age of 21 to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, tobacco related device or electronic delivery device, and it shall be a violation of this Ordinance for any person to purchase or otherwise obtain such items on behalf of a person under the age of 21. It shall further be a violation for any person to coerce or attempt to coerce a person under the age of 21 to illegally purchase or otherwise obtain for use any tobacco, tobacco product, tobacco related device or electronic delivery device. This subdivision shall not apply to persons lawfully involved in a compliance check.

(E) Use of False Identification. It shall be a violation of this Ordinance for any person under the age of 21 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.

SECTION 115.12 VIOLATIONS.

(A) Notice. Upon discovery of a suspected violation by a licensee or employee of a licensee, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his/her right to be heard on the accusation.

(B) Hearings. If a licensee or employee of a licensee accused of violating this Ordinance so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

(C) Hearing Panel. The City Council shall appoint a hearing officer to handle any requested hearings under this section.

(D) Decision. 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 under Section 115.99 of this Ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded in writing, a copy of which shall be provided to the accused violator.

(E) Appeals. Appeals of any decision of the City Council under this Ordinance shall be filed in the City Clerk's office for the City of Annandale.

SECTION 115.99 PENALTIES.

(A) Licensees. Any licensee found to have violated this Ordinance, or whose employees shall have violated this Ordinance, may be charged an administrative fine of up to \$200 for a first violation of this Ordinance; up to \$500 for a second offense at the same licensed premises within a twenty-four (24) month period; and up to \$1,000 for a third or subsequent offense at the same location within a twenty-four (24) month period. In addition, after the third offense, the license may be suspended for a period of up to seven (7) days. After a fourth or subsequent offense at the same location within a twenty-four (24) month period, the

(B) Other Individuals. Other individuals, other than minors regulated by subdivision (C) of this Subsection, found to be in violation of this Ordinance shall be charged an administrative fee of up to \$75 for a first violation of this Ordinance, and up to \$200 for a second offense within a twenty-four (24) month period.

(C) Minors. Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase tobacco, tobacco products, tobacco related devices or electronic delivery devices shall be charged an administrative fine of up to \$75 and shall be required to attend an appropriate tobacco related education class, diversion program, community service or another penalty that the City deems appropriate. The cost of such program shall be the responsibility of the minor attending the program.

(D) Persons under the age of 21. Persons under the age of 21 who use false identification to purchase or attempt to purchase Licensed Products may only be subject to non-criminal, non-monetary civil penalties such as tobacco-related education classes, diversion programs, community service, or another penalty that the City determines to be appropriate.

(E) Continuing Violation. Each violation, and every day in which a violation occurs or continues shall constitute a separate offense.

(F) Statutory Penalties. If the administrative penalty 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.

(G) Payment of Fines. Any administrative fines levied by the City pursuant to this section shall be paid within thirty (30) days of the date of mailing for the citation.

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