

CHAPTER 117: TOBACCO REGULATIONS

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§ 117.01 PURPOSE.

This chapter is intended to regulate the sale, possession, and use of tobacco, tobacco related devices, or electronic delivery devices for the purpose of enforcing and furthering existing laws, to protect young people against the serious effects associated with the use of tobacco, tobacco related devices or electronic delivery devices, and to further the official public policy of the state in regard to preventing young people from starting smoking as stated in M.S. § 144.391.

(Ord. 317, passed 9-21-20)

§ 117.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPLICANT. A person, as defined herein, who completes or signs an application for a license to sell tobacco, tobacco related devices or electronic delivery devices individually or on behalf of a business.

BUSINESS. The business of selling tobacco, tobacco related devices or electronic delivery devices.

ELECTRONIC DELIVERY DEVICE. Any product containing or delivering nicotine, lobelia or any other substance, whether natural or synthetic, intended for human consumption through inhalation of aerosol or vapor from the product. Electronic delivery devices includes but is not limited to devices manufactured, marketed or sold as electronic cigarettes, electronic cigars, electronic pipe, vape pens, modes, 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 excludes drugs, devices or combination products, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, that are authorized for sale by the United States Food and Drug Administration.

LICENSE HOLDER or LICENSEE. The owner of the business licensed to sell tobacco, tobacco related devices or electronic delivery devices.

MOVABLE PLACE OF BUSINESS. A business whose physical location is not permanent or is capable of being moved or changed.

PERSON. Includes one or more natural persons, a partnership, limited liability company, corporation, including a foreign, domestic, or nonprofit corporation, a trust, a political subdivision of the state or any other business organization.

SELF-SERVICE MERCHANDISING. A method of tobacco, tobacco related devices or electronic delivery devices so that they are accessible to the public without the intervention of an applicant, license holder or their agents or employees.

TOBACCO. 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, or any component, part, or accessory of a tobacco product including but not limited to 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 excludes drugs, devices, or combination products, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, that are authorized for sale by the United States Food and Drug Administration.

TOBACCO RELATED DEVICES. Cigarette papers or pipes for smoking or other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or inhalation of aerosol or vapor of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately.

VENDING MACHINE. Any mechanical or electric or electronic self-service device which, upon insertion of money, tokens

or any other form of payment dispenses tobacco, tobacco related devices or electronic delivery devices and the term includes vending machines equipped with manual, electric or electronic locking devices.

(Ord. 317, passed 9-21-20)

§ 117.03 LICENSE REQUIRED.

(A) No person shall keep for retail sale, sell or offer to sell at retail, or otherwise dispense any tobacco, tobacco related device or electronic delivery device at any place in the city without first obtaining a license and paying a license fee.

(B) An application for a license to sell tobacco, tobacco related devices or electronic delivery devices shall be made on a form provided by the city. The application shall include, but is not limited to requiring the full name of the applicant, the applicant's residential and business address and telephone numbers, the name of the proposed license holder, the business location for which the license is sought, a copy of the educational materials the applicant intends to use to educate employees, and any other information required by the city. The completed application along with the license fee shall be submitted to the City Administrator or his or her designee for approval. If the City Administrator or designee determines that an application is incomplete, he or she shall return the application to the applicant with notice of the deficiencies.

(C) The City Administrator or his or her designee may either approve or deny the license, or may delay action for a reasonable period of time as is required to permit the city to complete any investigation of the application or the applicant deemed necessary. If approved, a license shall be issued to the applicant. If denied, a notice of denial shall be issued to the applicant at the business address provided on the application along with the reasons for the denial. The notice shall also inform the applicant of their right to appeal the Administrator's decision to the City Council. The appeal must be taken within 20 days after receipt of a notice of denial, and if so taken, the appeal shall be scheduled to be heard at a subsequent Council meeting. If a license is mistakenly issued or renewed to an applicant or license holder, it shall be revoked by the City Administrator upon the discovery that the person, applicant or license holder was ineligible for the license under this section.

(D) All licenses are issued for a period of one year. The license period is from January 1 to December 31. The initial license term will expire at the end of the calendar year during which the license was issued.

(E) Any license issued under this section may be revoked or suspended, as provided in §§117.08 through 117.09, or as specifically provided elsewhere in this chapter.

(F) All licenses issued under this section shall be valid only on the business 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 Administrator or his or her designee.

(G) Every license shall be conspicuously posted at the place of business for which the license is issued, and shall be exhibited to any person upon request.

(H) The renewal of a license under this section shall be handled in the same manner as the original application. The request for renewal shall be made at least 30 but no more than 60 days before the expiration of the current license. The issuance of a license under this chapter 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.

(I) No person shall be issued a license or renewal license to sell tobacco, tobacco related devices or electronic delivery devices unless an applicant or license holder has an approved program for instructing all employees at the business premises for which the license was issued in the legal requirements pertaining to the sale of tobacco, tobacco related devices or electronic delivery devices, including, but not limited to, reviewing the law on the sale of tobacco, tobacco related devices or electronic delivery devices, providing information on the health risks of using tobacco, and requiring employees to request identification from every customer. No license shall be issued or renewed unless the applicant or license holder has received training and instruction on the sale of tobacco, tobacco related devices or electronic delivery devices. The training shall include information that the sale of tobacco, tobacco related devices or electronic delivery devices to persons under the age of 21 is illegal, explain what proof of age is legally acceptable, and that a sale to person under the age of 21 can subject the applicant or license holder and their employees to both criminal and civil liability.

(J) The following shall be grounds for denying the issuance or renewal of a license under this section. The following list is not exhaustive or exclusive:

(1) The applicant is under the age of 21 years.

(2) The applicant has been convicted within the past five years of a violation of any provisions of this chapter or a violation of a federal, state, or local law, ordinance provision, or other regulation relating to tobacco, tobacco related devices, or electronic delivery devices.

(3) The applicant or license holder has had a license to sell tobacco, tobacco related devices, or electronic delivery devices revoked within the preceding 12 months of the date of application.

(4) The applicant fails to provide any information required on the city license application, or provides false or misleading information.

(5) The applicant or license holder has outstanding fines, penalties or property taxes owed to the city.

(Ord. 317, passed 9-21-20)

§ 117.04 LICENSE FEE.

The license fee shall be determined by the City Council, and shall be paid at the time of application. License fees are not prorated.

(Ord. 317, passed 9-21-20)

§ 117.05 PROHIBITED SALES.

(A) No person shall sell, offer to sell, give away, furnish or otherwise deliver any tobacco, tobacco related device or electronic delivery device:

- (1) To any person under the age of 21 years;
- (2) By means of any type of vending machine; or
- (3) By any other means, or to any other person prohibited by federal, state, or other local law, ordinance provisions or other regulation.

(B) No person shall sell, offer to sell, give away, furnish or otherwise deliver any tobacco, tobacco related device or electronic delivery device by means of self-service merchandising or by any means whereby the customer may have access to the items without having to request the item from the license holder, their agents or employees. All tobacco, tobacco related devices or electronic delivery devices shall be stored behind a counter or other area not freely accessible to customers.

(Ord. 317, passed 9-21-20)

§ 117.06 MOBILE SALES.

No license shall be issued for the sale of tobacco, tobacco related devices or electronic delivery devices at a movable place of business, including, but limited to motorized vehicles, mobile sales kiosks or trailers.

(Ord. 317, passed 9-21-20)

§ 117.07 COMPLIANCE CHECKS.

All licensed premises shall be open to inspection by the city police or other authorized city officials during regular business hours. From time to time, but at least once per year, the city shall conduct unannounced compliance checks at licensed premises by engaging persons at least 17 years of age but under the age of 21, who, with prior written consent of a parent or guardian if the person is under the age of 18, attempt to purchase tobacco, tobacco related devices or electronic delivery devices while under the direct supervision of law enforcement or other city employee. 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 their 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 any other 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.

(Ord. 317, passed 9-21-20)

§ 117.08 VIOLATIONS.

(A) In addition to violations specified elsewhere in this chapter, the following acts shall be a violation of this chapter:

(1) It shall be a violation of this chapter for any person under the age of 21 years to have in his or her possession any tobacco, tobacco related device, or electronic delivery device. This division shall not apply to a person under the age of 21 that is lawfully involved in a compliance check conducted by city officials.

(2) It shall be a violation of this chapter for any person under the age of 21 years to smoke, chew, sniff, ingest or otherwise use any tobacco, tobacco related device or electronic delivery device.

(3) It shall be a violation of this chapter for any person under the age of 21 years to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco related device or electronic delivery device, and it shall be a violation of this chapter for any person to purchase or otherwise obtain these items on behalf of a person under the age of 21 years. It shall further be a violation for any person to coerce or attempt to coerce a person under the age of 21 years to purchase or otherwise obtain or use any tobacco, tobacco related device or electronic delivery device. This division shall not apply to a person under the age of 21 that is lawfully involved in a compliance check conducted by city officials.

(4) It shall be a violation of this chapter 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.

(B) Whoever sells tobacco to a person under the age of 21 years is guilty of a misdemeanor. It is an affirmative defense to a charge under this division if the defendant proves by a preponderance of the evidence that the defendant reasonably and in good faith relied on proof of age as described in M.S. § 340A.503, Subdivision 6.

(C) Whoever furnishes tobacco or tobacco related devices to a person under the age of 21 years is guilty of a misdemeanor. Notwithstanding the foregoing, an Indian may furnish tobacco to an Indian under the age of 21 years if the

tobacco is furnished as part of a traditional Indian spiritual or cultural ceremony. For purposes of this division, an Indian is a person who is a member of an Indian tribe, as defined in M.S. § 257.351, Subdivision 9, as it may be amended from time to time.

(Ord. 317, passed 9-21-20)

§ 117.09 ADMINISTRATIVE PENALTIES.

(A) If a licensee or employee of a licensee sells, gives, or otherwise furnishes tobacco, a tobacco related device, or an electronic delivery device to a person under the age of 21 years, or violates any other provision of this chapter, the licensee shall be charged an administrative penalty of \$300. An administrative penalty of \$600 shall be imposed for a second violation at the same location within 36 months after the initial violation. For a third or any subsequent violation at the same location within 36 months after the initial violation, an administrative penalty of \$1,000 shall be imposed and the licensee shall lose the licensee's authorization to sell tobacco, tobacco related devices or electronic delivery devices for a period of not less than 30 days nor more than one year. The loss of authorization shall be accomplished by a combination, if necessary, of a suspension of the licensee's then existing authorization and an order prohibiting renewal of the licensee's license for the prescribed period. No suspension, revocation or other penalty may take effect until the licensee has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before the City Council. A decision that a violation has occurred must be in writing.

(B) An individual who sells, gives, or otherwise furnishes tobacco, a tobacco related device or an electronic delivery device to a person under the age of 21 years shall be charged an administrative penalty of \$50. No penalty may be imposed until the individual has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before the City Council. A decision that a violation has occurred must be in writing.

(C) Any person who purchases or attempts to purchase tobacco, tobacco related devices or electronic delivery devices and is under the age of 21 years may be charged an administrative penalty of up to \$50. The city may also send notice of the violation to the violator's parents or school, or order the violator to attend tobacco-free education programs or other court diversion programs, or to perform appropriate community service. The provisions of this division shall not apply to a person under the age of 21 who purchases or attempts to purchase tobacco, tobacco related devices or electronic delivery devices while under the direct supervision of a responsible adult for training, research or enforcement purposes.

(Ord. 317, passed 9-21-20)

§ 117.10 ADMINISTRATIVE PENALTY PROCEDURE.

(A) Upon discovery of a suspected violation under § 117.09, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and the administrative penalty for the violation, and informs the alleged violator of his or her right to be heard on the accusation.

(B) If, within 20 days after receipt of a citation, a person accused of violating this chapter so requests, a hearing shall be scheduled, the time and place of which shall be provided to the accused violator.

(C) The City Council, or any other person as the Council may by resolution designate, shall serve as the hearing officer.

(D) If the hearing officer determines that a violation of this chapter did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under § 117.09, 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, the findings shall be recorded and a copy provided to the accused violator.

(E) Appeals of any decision made by the hearing officer shall be filed in the district court for the county in which the violator resides in accordance with applicable laws.

(F) Nothing in this section shall prohibit the city from seeking prosecution as a criminal offense for any alleged violation of this chapter.

(G) Each violation shall constitute a separate offense, and for violations that are ongoing by their nature, each day that such violation continues shall constitute a separate offense.

(Ord. 317, passed 9-21-20)