

CHAPTER 6**BUSINESS REGULATIONS AND LICENSES****615. TOBACCO, TOBACCO-RELATED DEVICES AND NICOTINE DELIVERY PRODUCTS.**

Section 615.01. Purpose. The city recognizes that many minors purchase or otherwise obtain, possess, and use tobacco, tobacco-related devices, or nicotine delivery products, and such sales, possession, and use are violations of both state and federal laws. Studies have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking. Smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government. This ordinance is intended to regulate the sale, possession and use of tobacco, tobacco-related devices, and nicotine delivery products for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the use of tobacco, tobacco-related devices, and nicotine delivery products and to further the official public policy of Minnesota in regard to preventing young people from starting to smoke, as stated in Minnesota Statutes, section 144.391.

Section 615.03. Definitions and Interpretations. Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The following terms shall have the definitions given to them:

Subd. 1. Tobacco. "Tobacco" means 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 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.

Subd. 2. Tobacco-Related Devices. "Tobacco-related devices" means cigarette papers or pipes for smoking.

Subd. 3. Self-Service Merchandising. "Self-Service Merchandising" shall mean open displays of tobacco, tobacco-related devices, or nicotine delivery products in any manner in which any person may have access to the tobacco, tobacco-related devices or nicotine delivery products 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-related devices or nicotine delivery products between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

Subd. 4. Vending Machine. "Vending Machine" shall mean any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco-related devices or nicotine delivery products upon the insertion of money, tokens or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco-related device or nicotine delivery product.

Subd. 5. Individually Packaged. "Individually packaged" shall mean the practice of selling any tobacco wrapped individually for sale. Individually wrapped tobacco 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.

Subd. 6. Loosies. "Loosies" shall mean a single or individually packaged cigarette.

Subd. 7. Minor. "Minor" shall mean any natural person who has not yet reached the age of 18 years.

Subd. 8. Retail Establishment. "Retail Establishment" shall mean any place of business in which tobacco, tobacco-related devices or nicotine delivery products are available for sale to the general public, including but not be limited to, grocery stores, convenience stores and restaurants.

Subd. 9. Moveable Place of Business. "Moveable Place of Business" shall refer to any business operated out of a mobile sales kiosk, kiosk, trailer, truck, van, automobile or other vehicle or transportable shelter and not at a fixed address, store front or other permanent structure authorized for sales transactions.

Subd. 10. Sale. A "sale" shall mean any transfer of goods for money, trade, barter or other consideration, including giving goods away for free alone or in conjunction with other goods or products.

Subd. 11. Compliance Checks. "Compliance Checks" shall mean the system used by the city or any other jurisdiction to investigate and ensure that those licensed to sell tobacco, tobacco-related devices and nicotine delivery products are complying with the requirements of this ordinance or any state or federal law or regulation. Compliance checks shall involve the use of minors as authorized by this ordinance. Compliance checks shall also mean the use of minors who attempt to purchase tobacco, tobacco-related devices, or nicotine delivery products for educational, research and training purposes as authorized by state or federal law.

Subd. 12. Nicotine Delivery Products. "Nicotine Delivery Products" shall mean any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco or a tobacco-related device as defined by this section. Nicotine delivery products excludes any product that has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation product, harm reduction,

or for medical purposes, and is being marketed and sold solely for such an approved purpose.

Section 615.05. License. No person shall sell or offer to sell any tobacco, tobacco-related device or nicotine delivery product without first having obtained a license to do so from the city in compliance with this section.

Subd. 1. Application. An application for a license to sell tobacco, tobacco-related devices or nicotine delivery products 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, the clerk shall forward the application to the city council for action at its next regularly scheduled meeting. If the clerk determines that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

Subd. 2. Action. The city council may either approve or deny the license, or it may delay action for such reasonable period of time as may be necessary to complete any investigation of the application or the applicant. If the city council approves the license, the clerk shall issue the license to the applicant. If the city council denies the license, notice of the denial shall be given to the applicant.

Subd. 3. Term. Each license shall be issued for a period of one calendar year. If the application is made during the license year, a license may be issued for the remainder of the licensed year on a pro rata basis. Any unexpired fraction of a month shall be counted as a complete month. Every license shall expire on December 31 of the license year.

Subd. 4. Revocation or Suspension. Any license issued under this ordinance may be revoked or suspended as provided in sections 615.21 and 615.23 of this ordinance.

Subd. 5. Transfers. All licenses issued 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.

Subd. 6. 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 ordinance.

Subd. 7. Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

Subd. 8. 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 by the licensee 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 licensee to an automatic renewal of the license.

Subd. 9. Fees. No license shall be issued under this ordinance until the appropriate license fee has been paid in full. The fee for a license under this chapter shall be set by ordinance in the city fee schedule, as it may be amended from time to time.

Subd. 10. Notice to Commissioner. The clerk shall, within 30 days of the issuance of a license, inform the commissioner of revenue of the licensee's name, address, trade name, and the effective and expiration dates of the license. The commissioner of revenue must also be informed of a license renewal, transfer, cancellation, suspension, or revocation during the license period.

Section 615.07. Basis for Denial or Revocation 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 council must deny the license:

Subd. 1. The applicant is a minor;

Subd. 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 tobacco, tobacco-related devices or nicotine delivery products;

Subd. 3. The applicant has had a license to sell tobacco, tobacco-related devices or nicotine delivery products revoked within the twelve months preceding the date of application;

Subd. 4. The applicant fails to provide any information required on the application, or provides false or misleading information; or

Subd. 5. The applicant is prohibited by federal, state, or other local law, ordinance or other regulation from holding such a 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.

Section 615.09. Prohibited Sales. It shall be a violation of this ordinance for any person to sell or offer to sell any tobacco, tobacco-related device or nicotine delivery product as follows:

Subd. 1. To any minor;

Subd. 2. By means of any type of vending machine, except as may otherwise be provided in this ordinance;

Subd. 3. By means of self-service merchandising;

Subd. 4. By means of loosies;

Subd. 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; or

Subd. 6. By any other means, to any other person, on in any other manner or form prohibited by federal, state, or other local law, ordinance provision or other regulation.

Section 615.11. Vending Machines. It shall be unlawful for any person licensed under this ordinance to allow the sale of tobacco, tobacco-related devices or nicotine delivery products by the means of a vending machine unless minors are at all times prohibited by law from entering the licensed establishment.

Section 615.13. Self-Service Merchandising. It shall be unlawful for a licensee under this ordinance to allow the sale of tobacco, tobacco-related devices or nicotine delivery products through self-service merchandising.

Section 615.15. Responsibility. All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco-related devices or nicotine delivery products on the licensed premises. The sale of any such item by an employee shall be considered a sale by the license holder and shall subject the license holder to the provisions of sections 615.21 and 615.23 of this ordinance. Nothing in this section shall be construed as prohibiting the city council from also subjecting the employee to appropriate penalties under this ordinance, state or federal law, or other applicable law or regulation.

Section 615.17. Compliance Checks and Inspections. All licensed premises shall be open to inspection by the city police 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 minors over the age of 15 years but less than 18 years to enter the licensed premise to attempt to purchase tobacco, tobacco-related devices or nicotine delivery products. Minors used for the purpose of compliance checks must have the written consent of their parents or guardians and shall be supervised by city designated law enforcement officers or other designated city personnel. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco-related devices, or nicotine delivery products when such items are obtained as a part of the compliance check. No minor engaged in a compliance check shall use or attempt to use false identification to misrepresent the minor's age. Minors engaged in a compliance check shall answer truthfully 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.

Section 615.19. Other Illegal Acts. Unless otherwise provided, the following acts shall be a violation of this ordinance:

Subd. 1. Sales. For any person to sell or otherwise provide any tobacco, tobacco-related device or nicotine delivery product to any minor;

Subd. 2. Possession. For any minor to have in his or her possession any tobacco, tobacco-related device or nicotine delivery product, excluding any minor lawfully involved in a compliance check;

Subd. 3. Use. For any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco-related device or nicotine delivery product;

Subd. 4. Procurement. For any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco-related device or nicotine delivery product; for any person to purchase or otherwise obtain any such item on behalf of a minor; or for any person to coerce or attempt to coerce a minor to purchase or otherwise obtain or use any tobacco, tobacco-related device or nicotine delivery product in a manner contrary to law, excluding any minor lawfully involved in a compliance check; and

Subd. 5. Use of False Identification. 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; and

Subd. 6. Tobacco Sampling. Tobacco sampling within a tobacco products shop as defined by Minnesota Statute 144.4167, Subd. 4 is specifically prohibited.

Section 615.21. Violations.

Subd. 1. Notice. The city shall issue a notice of violation to any licensee, employee of the licensee, or individual suspected of violating any provision of this ordinance. The notice of violation shall be served on the licensee, employee of the licensee, or individual personally or by mail. The notice shall contain the alleged violation and a statement concerning the licensee's right to a hearing.

Subd. 2. Hearing. If a licensee, employee of the licensee, or individual accused of violating this ordinance so requests, a hearing shall be scheduled before a hearing officer at a time and place which shall be published and provided to the accused violator.

Subd. 3. Hearing Officer. The city council shall serve as the hearing officer in any hearing requested under this section.

Subd. 4. Decision. Following the hearing, if the city council determines by a preponderance of the evidence that a violation of this ordinance occurred, that decision, along with the city council's reasons for finding a violation and the administrative penalty to be imposed under section 615.23 of this ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. If the city council finds that no violation occurred or finds grounds for not imposing any administrative penalty, such finding shall be recorded and a copy provided to the accused violator.

Subd. 5. Appeals. Any final decision by the city council under this section may be appealed to Hennepin County district court.

Subd. 6. Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense under this ordinance.

Subd. 7. Criminal Prosecution. Nothing in this ordinance shall prohibit the city from seeking criminal prosecution for any alleged violation of this ordinance in addition to the administrative penalties specified herein.

Section 615.23. Administrative Penalties.

Subd. 1. Licensees. Any licensee who sells tobacco, tobacco-related devices or nicotine delivery products to a minor or whose employee sells tobacco, tobacco-related devices or nicotine delivery products to a minor shall be charged an administrative fine of \$500 for a first violation, \$750 for a second violation at the same licensed premises within a 24 month period and \$1,000 for a third or subsequent violation at the same licensed premises within a 24 month period. Any licensee who sells tobacco, tobacco-related devices or nicotine delivery products to a minor or whose employee sells tobacco, tobacco-related devices or nicotine delivery products to a minor may also have his or her license suspended for up to 10 days for a first violation, up to 20 days for a second violation at the same licensed premises within a 24 month period, and up to 30 days for a third or subsequent violation at the same licensed premises within a 24 month period.

Subd. 2. Employees of Licensees. Any employee of a licensee who sells tobacco, tobacco-related devices or nicotine delivery products to a minor shall be charged an administrative fine of up to \$100 for a first violation, up to \$300 for a second violation within a 24 month period and up to \$500 for a third or subsequent violation within a 24 month period.

Subd. 3. Minors. Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, tobacco, tobacco-related devices or nicotine delivery products, shall be required to attend an appropriate education session concerning their violation and be required to serve up to 100 hours of community service, as determined by the chief of police. Any minor aggrieved by a decision of the chief of police in such instance may appeal the decision to the city council by providing written notice to the clerk within 10 days of the date of receipt of written notice of the decision by the chief of police.

Subd. 4. Other Individuals. Any individual other than a licensee or employee of a licensee who sells tobacco, tobacco-related devices or nicotine delivery products to a minor shall be charged an administrative fee of up to \$100 for a first violation, up to \$300 for a second violation within a 24-month period and up to \$500 for a third or subsequent violation with a 24-month period, subject to the right to a hearing before the city council as provided in section 615.21 of this ordinance. Nothing in this section shall prohibit the city or other jurisdiction from seeking criminal prosecution for any alleged violation of this ordinance by any individual other than a licensee or employee of a licensee. If the city or other jurisdiction seeks criminal prosecution under this subdivision, no administrative penalty shall

be imposed.

Section 615.25. Exceptions and Defenses. Nothing in this ordinance shall prevent the providing of tobacco, tobacco-related devices or nicotine delivery products to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to a charge of violating this ordinance for a person to have reasonably relied on proof of age as described by Minnesota Statute 340A.503, subd.6.

Section 615.27. Severability and Savings Clause. If any section or portion of this ordinance 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 ordinance.

Amendment History of this Section

***Amended May 19, 1998 (Ord. 299).** The previous language of this Section was repealed and replaced in its entirety with the language in Ord. 299.*

***Amended September 1, 2009 (Ord. 467).** Amending Sections 615.05, 615.09, 615.15 to include referencing the city fee schedule, deleting duplicate information related to minors, and other technical language modifications.*

***Amended October 5, 2010 (Ord. 495).** Amending the definition of tobacco to mirror the new statutory definition, deletes the definition of tobacco products, changes the definition of tobacco-related devices to mirror the statutory definition, adds language requiring notice to the commissioner of revenue, and other revisions to clarify the ordinance.*

***Amended April 1, 2014 (Ord. 561).** Adding the definition and regulation of nicotine delivery products, prohibiting tobacco sampling and other revisions to clarify the ordinance.*