

## CHAPTER 11.

### CIGARETTES.<sup>1</sup>

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#### **Sec. 11-1. License to sell<sup>2</sup>--required; definitions.**

(a) For the purposes of this Chapter, the terms "tobacco" and "tobacco related devices" shall have the meanings given them in Section 609.685 of the Minnesota Statutes and as the same may from time to time be amended, and shall include electronic cigarettes defined as any electronic-smoking device that can be used to deliver nicotine or any other substances to the person inhaling from the device. The term shall include such devices whether they are manufactured as electronic cigarettes, electronic cigars, electronic pipes or any other product name;

(b) No person or any clerk, servant, employee or agent of any such person shall, within the city, directly or indirectly upon any pretense manufacture, sell, exchange, barter or keep for sale any tobacco or tobacco related devices without first having obtained a license therefor. (Ord. No. 6577, § 1; Ord. No. 8971, 2-12-1990, § 1; Ord. No. 9314, 10-15-1996, § 1; Ord. No. 10076, 2-14-2011, § 1; Ord. No. 10243, 9-9-2013, § 1.)

#### **Sec. 11-2. Same--Fee.**

The annual fee for a license required by this Chapter shall be set in accordance with Section 31-6(a) of this Code. (Ord. No. 6577, § 2; Ord. No. 6585; Ord. No. 7118; Ord. No. 7130; Ord. No. 8221, 4-5-76, § 1; Ord. No. 8971, 2-12-1990, § 2; Ord. No. 9118, 1-11-1993, § 17; Ord. No. 9314, 10-15-1996, § 2; Ord. No. 9406, 3-22-1999, § 1; Ord. No. 9611, 7-28-2003, § 19.)

#### **Sec. 11-3. Same--Grant or denial and issuance; expiration date.**

(a) Licenses for the manufacture, sale, exchange, barter or keeping for sale of tobacco or tobacco related devices shall be granted by the administrative assistant and issued by the city clerk, who shall provide a suitable blank form of application for the use of the applicant. Such licenses shall expire on April 30 next after issue;

(b) The administrative assistant may deny a license for any of the following reasons:

(1) That the applicant, its managers or employees violated any ordinance or state or federal statute or regulation which relates to the sale or possession of tobacco or tobacco related devices;

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<sup>1</sup>For state law prohibiting sales to intoxicated persons, see M.S.A., § 340.73.

<sup>2</sup>For state law authorizing city to license retail sale of cigarettes, see M.S.A., § 461.12.

(2) That the applicant, its managers or employees were convicted of a crime that directly relates to the sale of tobacco or tobacco related devices and have not been rehabilitated within the meaning of Minnesota Statutes, Chapter 364;

(3) That the applicant made material misstatements of fact or omissions of fact on its present or past applications;

(4) That the applicant, its managers or employees refused to answer questions concerning its application or operations asked by the police or the administrative assistant;

(5) That the applicant failed to pay any city tobacco license fees when due. (Ord. No. 6577, § 2; Ord. No. 6585; Ord. No. 7118; Ord. No. 7130; Ord. No. 8971, 2-12-1990, § 3; Ord. No. 9314, 10-15-1996, § 3.)

**Sec. 11-4. Same--Character of applicant; movable places of business and vending machines licenses prohibited; to be issued for sale only at single location.**

No license required by this Chapter shall be issued except to a person of good moral character. No license shall be issued to an applicant for sale of **tobacco or tobacco related devices** at any place other than his established place of business. No license shall be issued for the sale of **tobacco or tobacco related devices** at a movable place of business, nor shall any license be issued for the sale of **tobacco or tobacco related devices** at more than one place of business. No license shall be issued authorizing the sale of **tobacco or tobacco related devices** from a vending machine or any other mechanical device. (Ord. No. 6577, § 6; Ord. No. 8971, 2-12-1990, § 4; Ord. No. 9314, 10-15-1996, § 4; Ord. No. 10243, 9-9-2013, § 2.)

**Sec. 11-5. Same--Revocation or suspension, administrative penalties.**

(a) Every license issued under this Chapter may be suspended up to 60 days or revoked by the alcohol, gambling and tobacco commission for any cause set forth in paragraph (b) of this Section after a public hearing held for such purpose, notice of which shall be mailed to the licensee at his or her place of business ten days before the holding of such hearing. Any decision to suspend or revoke a license shall be made in writing. Any licensee aggrieved by a decision of the alcohol, gambling and tobacco commission may appeal such decision to district court as provided in Minnesota Statutes, Section 461.12, Subd. 7;

(b) The following shall be good cause to revoke or suspend a tobacco license:

(1) That the applicant, its managers or employees violated any ordinance or state or federal statute or regulation which relates to the sale or possession of tobacco or tobacco related devices;

(2) That the applicant, its managers or employees were convicted of a crime that directly relates to the sale of tobacco or tobacco related devices and have not been rehabilitated within the meaning of Minnesota Statutes, Chapter 364;

(3) That the applicant made material misstatements of fact or omissions of fact on its present or past applications;

(4) A refusal by the applicant or its managers or employees to cooperate with the police in any investigation of unlawful tobacco sales;

(c) If a licensee or employee of a licensee sells tobacco to a person under the age of 18 years, or violates any other provision of this Chapter, the licensee shall be charged an administrative penalty set in accordance with Section 31-8 of this Code. An administrative penalty set in accordance with Section 31-8 of this Code must be imposed for a second violation at the same location within 24 months after the initial violation. For a third violation at the same location within 24 months after the initial violation, an administrative penalty set in accordance with Section 31-8 of this Code must be imposed, and the licensee's authority to sell tobacco at that location must be suspended for not less than seven days. No penalty or suspension under this paragraph shall be imposed until the licensee has been served personally by mail with notice of the alleged violation and been given an opportunity for a hearing as provided in paragraph (a) of this Section;

(d) If it appears that a licensee or the licensee's employees acting under the scope of the license have sold tobacco to persons under 18 years of age or otherwise violated this Chapter on four separate occasions during any 24 month period, the alcohol, gambling and tobacco commission must set a disciplinary hearing for the licensee. If, at the hearing, it is shown that the licensee or licensee's employees did sell tobacco to persons under 18 years of age or otherwise violated this Chapter on four separate occasions in

a 24 month period, the alcohol, gambling and tobacco commission must revoke the license. In addition, the licensee shall be ineligible to apply for a cigarette license in the next succeeding license year;

(e) An individual who sells tobacco to a person under the age of 18 years must be charged an administrative penalty set in accordance with Section 31-8 of this Code. 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 as provided in paragraph (a) of this Section. (Ord. No. 6577, § 7; Ord. No. 7130; Ord. No. 8971, 2-12-1990, § 5; Ord. No. 9314, 10-15-1996, § 5; Ord. No. 9406, 3-22-1999, § 2; Ord. No. 9438, 2-14-2000, § 27; Ord. No. 10155, 5-29-2012, § 6.)

**Sec. 11-6. Same--Not required of blind person.<sup>3</sup>**

No applicant for any license required of persons for the sale or manufacture of cigarettes shall be required to pay any fee to the city if such person furnishes to the city a doctor's certificate showing that such person is blind, as defined by state law. (Ord. No. 6577, § 8.)

**Sec. 11-7. Sales from vending machines prohibited.**

No person shall sell or offer for sale any tobacco or tobacco related devices from a vending machine or other mechanical device. The presence of a cigarette vending machine containing tobacco or tobacco related devices on any business premises other than that of a supplier, repairer or distributor of cigarette vending machines shall constitute prima facie evidence of such business offering for sale tobacco or tobacco related devices through the use of a vending machine. (Ord. No. 6577, 11-3-41, § 2a; Ord. No. 7195, 3-9-1959; Ord. No. 8971, 2-12-1990, § 6; Ord. No. 8994, 9-6-1990, § 1; Ord. No. 9130, 3-15-1993, § 1; Ord. No. 9314, 10-15-1996, § 6; Ord. No. 10243, 9-9-2013, § 3.)

**Sec. 11-8. Sales to minors prohibited.**

(a) No person, or any clerk, servant, employee or agent of any such person, directly or indirectly, upon any pretense or by any mechanical device, shall sell, exchange, barter, dispose of or give away, to any person below the age of 18 years, any tobacco or tobacco related devices;

(b) It shall be the affirmative duty of every seller of tobacco or tobacco related devices to ascertain the age of every prospective purchaser who reasonably appears to be 19 years of age or less;

(c) Proof of age for purchasing tobacco or tobacco related devices may be established only by one of the following:

(1) A valid driver's license or identification card issued by Minnesota, another state, or a province of Canada, and including the photograph and date of birth of the licensed person;

(2) A valid military identification card issued by the United States department of defense;

or

(3) In the case of a foreign national, from a nation other than Canada, by a valid passport;

(d) In a prosecution under this Section, it is a defense for the defendant to prove by a preponderance of the evidence that the defendant reasonably and in good faith relied upon representations of proof of age authorized in paragraph (c) in selling, bartering, furnishing, or giving the tobacco or tobacco related devices. (Ord. No. 6577, 11-3-1941, § 4; Ord. No. 9314, 10-15-1996, § 7.)

**Sec. 11-9. Smoking by minors, possession or purchase of tobacco prohibited.<sup>4</sup>**

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<sup>3</sup>For state law exempting blind persons from licensing requirements, see M.S.A., § 461.15.

<sup>4</sup>For state law re: warning to persons under 18 years of age against use of cigarette vending machines, see M.S.A., § 325.765. As to minors using tobacco and the furnishing of tobacco to minors, see M.S.A., § 609.685.

(a) The smoking or use of tobacco or tobacco related devices within the city by any person below the age of 18 years is hereby prohibited. Any person of such minor age found smoking or using tobacco or tobacco related devices shall be guilty of a misdemeanor;

(b) No person under 18 years of age shall possess any tobacco or tobacco related devices on his or her person;

(c) No person under 18 years of age shall purchase, attempt to purchase, or conspire to have another person purchase for him or her any tobacco or tobacco related devices. (Ord. No. 6577, 11-3-1941, § 5; Ord. No. 8971, 2-12-1990, § 7; Ord. No. 9314, 10-15-1996, § 8; Ord. No. 10243, 9-9-2013, § 4.)

**Sec. 11-10. Self-service merchandising.**

(a) No person shall offer for sale tobacco in open displays which are accessible to the public without the intervention of a store employee. No business establishment licensed under this Chapter shall sell tobacco in any manner except by having the licensee or an employee of the licensee physically deliver the tobacco to the customer;

(b) It shall be an affirmative defense in any prosecution under this Section for the defendant to show by a preponderance of the evidence that the alleged sale of tobacco took place in an establishment licensed to sell tobacco that:

(1) Holds itself out as a store that sells only tobacco and tobacco-related products;

(2) Prohibits persons under 18 years of age from entering or remaining on the premises and has posted signs at the establishment's entrance informing customers that they must be at least 18 years old to enter;

(3) Derives at least 90 percent of its revenues from the sale of tobacco or tobacco related products as shown by business records it keeps in the ordinary course of business. (Ord. No. 9314, 10-15-1996, § 9; Ord. No. 9406, 3-22-1999, § 3.)

**Sec. 11-11.** Repealed by Ordinance No. 8971, 2-12-1990, § 8.