

Section 1132 - Tobacco and Related Products

(Added, Ord. No. 96-08)

1132.01. Definitions. Where used in this section, the following terms have the following meanings:

- (a) “Child-resistant packaging” means 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. (Added, Ord. No. 17-14)
- (b) “Cigar” means 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 Minnesota Statutes, section 297F.01, subdivision 3, as may be amended from time to time. (Added, Ord. No. 17-14)
- (c) “Compliance checks” means 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 section. Compliance checks involve the use of persons under the age of 18 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, or training purposes or for investigating or enforcing federal, state, or local laws and regulations relating to licensed products. (Added, Ord. No. 17-14)
- (d) “Electronic delivery device” means any product containing or delivering nicotine, lobelia, or any other substance 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 product that has been approved or certified 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 marketed and sold for such an approved purpose. (Added, Ord. No. 17-14)
- (e) “Flavored product” means any licensed product that contains a taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, that is distinguishable by an ordinary consumer either prior to or during consumption of the licensed product, including, but not limited to, tastes or aromas of chocolate, vanilla, honey, cocoa, or any candy, dessert, alcoholic beverage, fruit, herb, or any spice. A public statement or claim made or disseminated by the manufacturer of a licensed product, or by any person authorized or permitted by the manufacturer to make or disseminate such statements or claims, that a tobacco product has or produces taste or aroma other than tobacco may be one of the methods used to determine that the product is a flavored tobacco product, and shall to the extent permitted by law, create a rebuttable presumption that the product is a flavored tobacco product. (Added, Ord. No. 17-14)

- (f) “Licensed products” collectively refers to any tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product. (Added, Ord. No. 17-14)
- (g) “Minor” means any natural person who has not reached the age of 18 years. (Added, Ord. No. 17-14)
- (h) “Movable place of business” means any form of business operated out of a kiosk, 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. (Added, Ord. No. 17-14)
- (i) “Nicotine or lobelia delivery product” means 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 product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation or for other medical purposes, and is being marketed and sold solely for that approved purpose. (Amended, Ord. No. 17-14)
- (j) “Self-service merchandising” means a method of displaying licensed products so that they are accessible to the public without the intervention of an employee. (Amended, Ord. No. 17-14)
- (k) “Tobacco product” means 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-out, ready-rubbed, and other smoking tobacco; snuff, snuff flower, cavendish, plug and twist tobacco; fine cut or other chewing tobaccos; shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco product does not include any 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. (Amended, Ord. No. 98-07; Amended, Ord. No. 17-14)
- (l) “Tobacco-related device” means any pipe, rolling papers, or other device intentionally designed or intended to be used with tobacco products. Tobacco-related device includes components of tobacco-related devices which may be marketed or sold separately. (Added, Ord. No. 17-14)
- (m) “Vending machine” means any mechanical, electrical or electronic, or other type of device which, upon inserting money, tokens or any other form of payment, dispenses licensed products. (Amended, Ord. No. 98-07; Amended, Ord. No. 17-14).

1132.03. License required. No person shall directly, by coin machine, or otherwise, keep for retail sale, sell at retail, or otherwise furnishing, any licensed products at any place in the city unless they have obtained a license therefore as provided herein. (Amended, Ord. No. 13-08; Amended, Ord. No. 17-14)

1132.05. Application and issuance. Application for such license shall be made to the city clerk and shall state the full name and address of the applicant, the location of the building to be occupied by the applicant in the conduct of the business, the kind of business to be conducted, and such other information as the city clerk may require. The application shall be presented to the city council for its consideration, and if granted by the council, a license will be issued by the city clerk upon payment of the required fee.

1132.06. Basis for denial of license. (Added, Ord. No. 17-14)

- (a) Grounds for denying the issuance or renewal of a license include, but are not limited to, the following: (Added, Ord. No. 17-14)
 - (1) The applicant is under 21 years of age. (Added, Ord. No. 17-14)
 - (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. (Added, Ord. No. 17-14)
 - (3) The applicant has had a license to sell licensed products suspended or revoked within the preceding 12 months of the date of application. (Added, Ord. No. 17-14)
 - (4) The applicant fails to provide any information required on the application, or provides false or misleading information. (Added, Ord. No. 17-14)
 - (5) The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a license. (Added, Ord. No. 17-14)
 - (6) Applicant is acting as an agent or pass through for another person or entity whose prior acts violated subsections (a) 1, 2, 3, or 4 above or who is otherwise prohibited from holding a license under any applicable rule or law. (Added, Ord. No. 17-14)
- (b) 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.
- (c) 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 ordinance. Notice of the revocation will be given to the person along with information on the right to appeal.

1132.07. License fee. The fee for a license is set by Appendix B.

1132.09. Term. The issuance of license is a privilege and does not entitle the holder to an automatic renewal of the license. Licenses expire annually on December 31. Licenses are not transferable. License renewal is subject to the license provisions described in section 1005 Licensing Procedures. (Amended, Ord. No. 02-05; Amended Ord. No. 17-14)

1132.11. License displayed. The license must be kept conspicuously posted on the premises for which the license is issued and must be exhibited to any person upon request.

1132.13. Location. A license will not be issued to a movable place of business. Only fixed location businesses are eligible to be licensed and separate licenses are required for each location. (Amended, Ord. No. 17-14)

1132.15. Prohibited acts.

- (a) In general. No person shall sell or offer to sell any licensed product:
- (1) Containing opium, morphine, jimson weed, bella donna, strychnia, cocaine, marijuana, or any other controlled substance or deleterious or poisonous drug, except nicotine. (Amended, Ord. No. 17-14)
 - (2) By means of any type of vending machine. (Amended, Ord. No. 17-14)
 - (3) By means of any type of self-service merchandising whereby the customer may have access to those items without having to request the item from the licensee or licensee's employee and whereby there is not a physical exchange of the licensed product between the licensee or licensee's employee and the customer. All licensed products must be stored behind the sales 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 licensed products at the time this subsection is adopted must comply with this subsection within 90 days of its effective date. (Added, Ord. No. 17-14)
 - (4) 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. (Added, Ord. No. 17-14)
- (b) Legal age. No person shall sell any licensed product to any person under the age of 18. (Added, Ord. No. 17-14)
- (1) Age verification. Licensees must verify by means of proof of age described in Minnesota Statutes, section 340A.503, subdivision 6, paragraph (a) that the purchaser is at least 18 years of age. Verification is not required for a person who reasonably appears to be over the age of 27. (Added, Ord. No. 17-14)
 - (2) Signage. Notice of the legal sales age and age verification requirement must be posted at each location where licensed products are offered for sale. (Added, Ord. No. 17-14)

- (c) Flavored products. No person shall sell or offer for sale any flavored products. This restriction does not apply to retailers that prohibit persons under 18 from entering at all times and derive at least 90 percent of their revenues from the sale of licensed products. Any retailer that sells flavored products must provide upon request such financial records that document annual total sales and sales of licensed products. (Added, Ord. No. 17-14)
- (d) Cigars. No person shall sell, offer for sale, or otherwise distribute cigars in original packages containing three or fewer cigars for a sale price, after any coupons, multipack or buy-one-get-one promotions, or any other discounts are applied prior to applicable sales taxes being imposed of less than \$2.60 per cigar contained within. In addition, no person shall sell, offer for sale or otherwise distribute cigars in original packages of four or more cigars for a sale price, after any coupons, multipack or buy-one-get-one promotions, or any other discounts are applied prior to applicable sales taxes being imposed, of less than \$10.40 per package. (Added, Ord. No. 17-14)
- (e) Liquid packaging. No person shall sell or offer for sale any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device, that is not contained in child-resistant packaging. Upon request, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packing used. (Added, Ord. No. 17-14)

1132.17. Other illegal acts. (Amended, Ord. No. 17-14)

- (a) Illegal procurement. It shall be a violation of this section for any person to purchase or otherwise obtain licensed products on behalf of a minor. (Amended, Ord. No. 13-08; Amended Ord. No. 17-14)
- (b) Use of false identification. It shall be a violation of this section for any minor 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.

1132.19. Violations.

- (a) Misdemeanors. Any person who violates this section shall be guilty of a misdemeanor.
- (b) Administrative civil penalties; individuals. Any person, other than individuals regulated by paragraph (c) of this subsection, found to be in violation of this section is subject to an administrative penalty. No penalty shall 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 manager or the city manager's designee. Notice is deemed received when sent to last known address. A decision that a violation has occurred shall be in writing. The city council may impose administrative penalties as follows: (Amended, Ord. No. 17-14)

First violation: The city council may impose a civil fine of not less than \$50 nor more than \$500.

Second violation within 12 months: The city council may impose a civil fine of not less than \$50 nor more than \$750.

Third violation within 12 months: The city council may impose a civil fine of not less than \$50 nor more than \$1,000. (Amended, Ord. No. 98-07, Ord. No. 13-08)

- (c) Underage persons. Persons under 18 years of age who use false identification to purchase or attempt to purchase licensed products may be subject to tobacco-related education classes, diversion programs, community services, or another penalty that the city believes will be appropriate and effective. The city council will consult with the courts, educators, parents, children, and other interested parties to determine an appropriate penalty for underage violations. The penalty may be established by resolution and amended from time to time. (Added, Ord. No. 17-14)
- (d) Administrative civil penalties; licensee. If a licensee or an employee of a licensee is found to have violated this section, the licensee shall be subject to an administrative penalty as follows: (Amended, Ord. No. 17-14)

First violation: The city council shall impose a civil fine of not less than \$75 nor more than \$500. The licensee's license may also be suspended for a period of not more than ten days.

Second violation within 24 months: The city council shall impose a civil fine of not less than \$200 nor more than \$750. The licensee's license shall also be suspended for a period of not more than 20 days.

Third violation within 24 months: The city council shall impose a civil fine of not less than \$250 nor more than \$1,000. The licensee's license shall also be suspended for a period of not less than seven nor more than 30 days.

No suspension or penalty shall 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 manager or the city manager's designee. A decision that a violation has occurred shall be in writing. (Amended, Ord. No. 98-07, Ord. No. 13-08)

- (e) Defense. It is a defense to an alleged violation of this section, that the licensee or individual reasonably and in good faith relied upon representation of proof of age as shown on one of the acceptable forms of identification as described in Minnesota Statutes, section 340A.503, subdivision 6, paragraph(a). (Amended, Ord. No. 13-08; Amended Ord. No. 17-14)

- (f) Exemption. A person, no younger than 15 and no older than 17, may be enlisted to assist with unannounced compliance checks for each licensed premises at least once a year, provided that written consent from the person's parent or guardian has been obtained and that the person shall at all times act only under the direct supervision of a law enforcement or other designated personnel for training, education, research, or enforcement purposes. A person used for the purpose of compliance checks is exempt from the penalties imposed by this section and will not be guilty of unlawful purchase, attempt to purchase, possession, use, or procurement when licensed products are obtained as part of the compliance check. (Amended Ord. No. 13-08; Amended Ord. No. 17-14)

- (g) Revocation. A license may be revoked or suspended by the city council for a violation of the provisions of this subsection after notice and hearing.

1132.21 Severability. If any subsection or provision of this section is held invalid, such invalidity will not affect other subsections or provisions that can be given force and effect without the invalidated subsection or provision. (Added, Ord. No. 17-14)