

Section 424 –  
Tobacco and Tobacco-  
related Products

Section 424:00. Definitions.

Subd. 1. “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 ordinance. Compliance checks involve the use of persons under the age of 21 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, and training purposes or for investigating or enforcing federal, state, or local laws and regulations relating to licensed products.

Subd. 2. "Electronic Delivery Device" means 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 device includes but is not limited to devices manufactured, marketed, or sold as electronic cigarettes, electronic cigars, electronic pipes, 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.

Subd. 3. “Licensed Products” means any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

Subd. 4. "Location" means the building, room or rooms, space or area where licensed products are sold at retail, identified by a postal address and under the control of one person.

Subd. 5. “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 Ordinance. Nicotine or lobelia delivery product does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products” as defined in the Federal Food, Drug, and Cosmetic Act.

Subd. 6. "Operator" means the person in legal possession and control of a location by reason of ownership, lease, contract or agreement, for the sale of licensed products at retail.

Subd. 7. “Retail Establishment” means any place of business where licensed products are available for sale to the general public. Retail Establishment includes but is not limited to grocery stores, tobacco product shops, convenience stores, gasoline service stations, bars and restaurants.

Subd. 8. "Retail Tobacco Dealer” means any person, selling, offering for sale or having in possession for sale, at retail, licensed products as defined.

Subd. 9. “Sale” means any transfer of goods for money, trade, barter or other consideration.

Subd.10. "Self-service Vending" means the display for sale of licensed products which are accessible to the public without the need of assistance of an employee.

Subd. 11. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. Smoking also includes carrying or using an activated Electronic Delivery Device.

Subd. 12. "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 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.

Subd. 13. "Tobacco-related Devices" means 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.

Subd.14. "Tobacco Shop" means a self-contained, independent retail facility, as opposed to a department within a larger retail establishment, that is not more than 1000 square feet in area, has an entrance door opening directly to the outside, in which at least 90 percent of its gross revenue is from the sale of licensed products, which includes open air display of individual products for inspection and selection by patrons, and which is continuously staffed by an employee from which persons under 21 years of age are prohibited from entering, and which otherwise complies with the requirements of Minnesota Statute Section 461.18, Subd. 1(b).

Subd. 15. " Vending Machine" means any mechanical, electric or electronic, or other type of device that dispenses licensed products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the licensed product.

Section 424:05. License Required. It will be unlawful for any person to sell at retail any licensed products within the City unless the person then holds a retail tobacco dealer's license, in full force and effect.

Section 424:10. Procurement of License.

Subd. 1. Any person desiring a retail tobacco dealer's license will make and file with the City Clerk an application, in writing, executed in duplicate. Such application will give the name and residence address of the applicant, if an individual, will identify the location at which it is proposed to sell the licensed products at retail, and will provide such other information as the Council may from time to time require. The application will be accompanied by the required fee.

Subd. 2. The City Clerk will immediately transmit a copy of the application to the Chief of Police, who will investigate of all facts and information which he/she can reasonably find, bearing upon the question of the applicant's fitness to receive the license and to perform the duties imposed by this ordinance. Upon completing the investigation, the Chief of Police will report, in writing, her/his findings to the Mayor, together with her/his recommendation as to the issuance of a license to the applicant. The Mayor will submit to the City Council the report of the Chief of Police, together with the recommendation as to the issuance of the license to the applicant.

Subd. 3. The City Council will consider the facts and recommendation of the Chief of Police and of the Mayor, together with any material facts which it may have or obtain, and then, by motion, will approve or deny the application to the City Clerk together with a copy of the motion. If the Council has approved the application, it is the duty of the City Clerk to execute and deliver a license to the applicant on a form approved by the City Attorney. Such license will be for the calendar year for which it is issued, or if it be a first issue for the location by the licensee then for the balance of the current year.

Section 424:15. Basis for Denial of License.

- A. Grounds for denying the issuance or renewal of a license include, but are not limited to, the following:
- (1) The applicant is under 21 years of age.
  - (2) The applicant has been convicted within the past five years of any violation of federal, state, or local law, ordinance provision, or other regulation relating to licensed products.
  - (3) The applicant has had a license to sell licensed products suspended or revoked within the preceding 12 months of the date of application.
  - (4) The applicant fails to provide any of the information required on the licensing application, or provides false or misleading information.
  - (5) The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a license.
  - (6) The business for which the license is requested is a moveable place of business. Only fixed-location retail establishments are eligible to be licensed.
- B. If a license is mistakenly issued or renewed to a person, the City will revoke the license upon the discovery that the person was ineligible for the license under this Ordinance. The City will provide the license holder with notice of the revocation, along with information on the right to appeal.

Section 424:16. Smoking Prohibited. Smoking shall not be permitted in and no person shall smoke indoors at a location with a retail tobacco license.

Section 424:17. Sales of Single Packages. No retail tobacco licensee will offer for sale single packages of tobacco products in open displays that are accessible by the public without the intervention of a store employee.

Section 424:18. Self-service Sales. Except in retail establishments for persons 21 years of age and older, no person shall allow the sale of a licensed product in open displays which are accessible to the public without the intervention of a store employee. This section does not apply to a tobacco shop.

Section 424:19. Prohibition Against Retail Sales of Licensed Products by Vending Machines. No person will sell or dispense tobacco products, electronic delivery devices, or nicotine or lobelia delivery products through the use of a vending machine.

Section 424:20. Signage. At each location where tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are sold, the licensee shall display a sign in plain view to provide public notice that selling any of these products to any person under the age of 21 is illegal and subject to penalties. The notice shall be placed in a conspicuous location in the licensed establishment and shall be readily visible to any person who is purchasing or attempting to purchase these products. The sign shall provide notice that all persons responsible for selling these products must verify, by means of photographic identification containing the bearer's date of birth, the age of any person under 30 years of age.

Section 424:21. Age Verification. At each location where tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are sold, the licensee shall verify, by means of government-issued photographic identification containing the bearer's date of birth, that the purchaser or person attempting to make the purchase is at least 21 years of age. Verification is not required if the purchaser or person attempting to make the purchase is 30 years of age or older. It shall not constitute a defense to a violation of this Section that the person appeared to be 30 years of age or older.

Section 424:22. Compliance Checks and Inspections. All licensed premises must be open to inspections by law enforcement or other authorized city officials during regular business hours. From time to time, but at least once per year, the City will conduct compliance checks. In accordance with state law, the City will conduct a compliance check that involves the participation of a person at least 17 years of age, but under the age of 21 to enter the licensed premises to attempt to purchase licensed products. Prior written consent from a parent or guardian is required for any person under the age of 18 to participate in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel.

Section 424:25. Suspension or Revocation of Licenses: Civil Penalty.

Subd. 1. The Council will follow the provisions of this section of the ordinance on the suspension, revocation or imposition of a civil penalty against any license granted under this ordinance.

Subd. 2. Notice of Violation. The Chief of Police will report, in writing, any violation of the provisions of this section or Minnesota Statutes Chapter 461 committed in the operation of the licensee's business to the City Attorney's Office, giving all facts and circumstances known. If the City Attorney's Office determines from the facts and circumstances reported, together with any other facts and circumstances known to it, that the violation may warrant a suspension or revocation of the licenses held by the licensee, it will fix a time and place for a hearing sufficiently in advance to enable ten days written notice of the time, place and purpose of such hearing. The City Attorney's Office will then report to the Council at its next regularly scheduled meeting that a hearing has been scheduled on an alleged violation at the licensed premises.

Subd. 3. Hearing on Alleged Violations. The hearing will be held before an independent hearing officer, in accordance with Section 1100 of the 2007 Code of Ordinances. At the time of the hearing, the licensee may appear and present any evidence which is material to the investigation. The hearing officer will make a finding of facts as to whether a violation of the provisions of this section or Minnesota Statutes Chapter 461 has been committed in the operation of the licensee's business and whether the violation was willful in nature. The hearing officer will also make a recommendation of what penalty, if any, will be applied. The City Council will adopt the hearing officer's findings of fact that the licensee is guilty of a violation of any of the provisions of this ordinance or State law, and may impose a civil fine, or suspend or revoke the retail dealer's license in accordance with the schedule in Section 424:30. Subd. 4. Mandatory Revocation. The Council will revoke the license or licenses of any licensee under this ordinance if the licensee willfully violates any provisions of the Minnesota Statutes Chapter 461.

Section 424:30. Penalties for Violations. Upon a violation by a licensee holding a retail tobacco dealer's license of any provision of this ordinance or any provision of a state law regulating the sale or furnishing of tobacco to a person under the age of 21, the City Council may impose a civil fine, or suspend or revoke the retail tobacco dealer's license in accordance with the following schedule:

First violation.....	fine up to \$300.00
Second violation within 36 months.....	fine up to \$600.00 and a 30 day license suspension
Third violation within 36 months.....	fine up to \$1,000.00 and a license revocation
Violation during period of suspension.....	license revocation

No suspension or 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 a person authorized by the licensing authority to conduct the hearing. A decision that a violation has occurred must be in writing, pursuant to Minnesota Statutes, Section 461.12.

Any civil fine assessed against a licensee pursuant to this section must be paid in full within 30 days from receipt of written notification of the City Council imposition of the civil fine. Failure

to pay the fine within that time period will result in a ten day license suspension. Licensees whose licenses have been revoked may not be issued a new license within six months from the effective date of such revocation.

History: Ord. 2457, 4-5-10; Ord. 2520 12-19-12; Ord. 2835, 6-7-2021