

Section 1155 - Tobacco Ordinance

1155.01. Purpose. This ordinance shall be intended to regulate the sale, possession, and use of tobacco, tobacco products, and tobacco related devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, and tobacco related devices, and to further the official public policy of the State of Minnesota in regard to preventing young people from starting smoking as stated in M.S. 144.391.

1155.04. Definitions. Subdivision 1. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:

Subd. 2. Tobacco or Tobacco Products. “Tobacco or Tobacco Product” shall mean cigarettes, cigars, e-cigarettes, liquid nicotine, cheroots, stogies, perique, granulated, plug cut, crimp cut, ready, rubbed and other smoking tobacco; snuff, snuff flower, Cavendish, plug and twist tobacco; fine cut and other chewing tobaccos; shorts, refuse scripts, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such a manner as to be suitable for chewing, sniffing, or smoking in a pipe; rolling paper or other tobacco related devices. This definition does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.

Subd. 3. Tobacco Related Devices. “Tobacco Related Devices” shall mean cigarette papers or pipes for smoking or other devices intentionally designed or intended to be used in a manner which enables chewing, sniffing, smoking, or vaping of tobacco or tobacco products, including e-cigarettes and e-cigarette cartridges.

Subd. 4. Minor. “Minor” shall mean any natural person who has not yet reached the age of eighteen (18) years.

Subd. 5. Retail Establishment. “Retail Establishment” shall mean any place of business where tobacco, tobacco products, or tobacco related devices are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, and restaurants.

Subd. 6. License Holder or Licensee. License Holder or Licensee” shall mean one (1) 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.

Subd. 7. Self-service Merchandising. “Self-service merchandising” shall mean a method of displaying tobacco, tobacco products, or tobacco related devices so that they are accessible to the public without the intervention of the licensee, their agents or employees.

Subd. 8. Vending Machine. “Vending machine” shall mean any mechanical, electric or electronic, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco products and including vending machines equipped with manual, electric or electronic locking devices.

Subd. 9. Moveable Place of Business. “Moveable Place of Business” shall refer to any form of business operated out of a motorized vehicle, mobile sales kiosk, trailer or other transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

Subd. 10. Individually Packaged. “Individually packaged” shall mean the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products 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 herein shall not be considered individually packaged.

Subd. 11. Sale. “Sale” shall mean any transfer of goods for money, trade, barter, or other consideration.

Subd. 12. Compliance Checks. “Compliance Checks” shall mean the system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, and tobacco related devices are following and complying with the requirements of this ordinance. 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 products or tobacco related devices for educational, research and training purposes as authorized by State and Federal laws. Other units of government for the purpose of enforcing appropriate Federal, State, or local laws may also conduct compliance checks and regulations relating to tobacco, tobacco products, and tobacco related devices.

Subd. 13. E-cigarettes. E-cigarettes are cigarette-shaped electronic delivery devices that employ a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means to produce a vapor from liquid nicotine to simulate the experience of smoking tobacco through inhalation and exhalation of the produced vapor. This term shall include such devices whether they are manufactured e-cigarettes, e-cigs, e-cigars, e-pipes, personal vaporizers, electronic delivery systems, or electronic delivery devices. E-cigarettes include any component part of a product, whether or not marketed or sold separately.

Subd. 14. Liquid Nicotine. Any liquid product manufactured for use with e-cigarettes, including e-liquid and e-juice, which produces an aerosol when heated, composed either in whole or in part of a mixture of ingredients, which may include pure nicotine, propylene glycol, vegetable glycerin, and other flavorings.

Subd. 15. E-cigarette cartridges. A container which serves as a reservoir for Liquid Nicotine for use in an e-cigarette.

Subd. 16. Sampling. The distribution to members of the general public of tobacco, tobacco products, or tobacco related devices, on-site, at a licensed premises, at no costs or at nominal cost for product promotional purposes.

Subd. 17. Vaping. Inhaling or exhaling the vapor produced by an e-cigarette.

Subd. 18. Tobacco Shop/Store. A retail establishment operated for the primary purpose of merchandising, selling, sampling and vaping of E-cigarettes.

1155.05. License. No person shall sell or offer to sell any tobacco, tobacco products, or tobacco related device without first having obtained a license to do so from the city. A license under this section does not permit sampling on the licensed premises.

Subd. 1. Application. An application for a license to sell tobacco, tobacco products, or tobacco products, or tobacco related devices shall be made on a form provided by the city. The application shall contain 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 city clerk shall forward the application to the council for action at its next regularly scheduled council meeting. If the clerk shall determine that an application is incomplete, the city clerk shall return the application to the applicant with notice of the information necessary to make the application complete.

Subd. 2. Denial. 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:

- a) The applicant is under the age of 18 years.
- b) The applicant has been convicted within the past five years of a violation of any provisions of this ordinance or a violation of Federal, State or local law, ordinance provision, or other regulation relating to tobacco, tobacco products, or tobacco related devices.
- c) The applicant or license holder has had a license to sell tobacco, tobacco products or tobacco related devices revoked within the preceding twelve (12) months of the date of application.
- d) The applicant fails to provide any information required on the city license application, or provides false or misleading information.
- e) The applicant or license holder has outstanding fines, penalties or property taxes owed to the city.

Subd. 3. Action. The council may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the council shall approve the license, the city clerk shall issue the license to the applicant. If the council denies the license, notice of denial shall be given to the applicant along with notice of the applicant's right to appeal the council's decision.

Subd. 4. Term. All licenses issued under this ordinance shall expire on June 30 of each calendar year. (Amended Ord. 2003-899)

Subd. 5. Revocation or Suspension. Any license issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties of this ordinance.

Subd. 6. 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. (Amended Ord. 2003-899)

Subd. 7. 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. 8. Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premises.

Subd. 9. Training. Every retail business requesting a license under this ordinance shall implement a training program for employees regarding laws relating to the sale of tobacco products. Every licensee shall certify on its annual tobacco application that all employees have been trained to comply with state laws regarding the sale of tobacco products.

Subd. 10. Renewals. The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for renewal shall be made at least thirty (30) days but no more than sixty (60) 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 licensee and shall not entitle the licensee to an automatic renewal of the license.

Subd. 11. Minor Employees. Any person that is under the age of 18 and employed by a licensed retail establishment may sell tobacco products provided that the parents or guardians of that minor, have signed a written consent allowing the minor to sell tobacco products.

1155.06. Fees. No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The fee for a license under this ordinance shall be set by city council resolution.

1155.07. Prohibited Sales. Subdivision 1. Prohibited Sales. No person shall sell, offer to sell, give away, furnish, or otherwise deliver any tobacco, tobacco product, or tobacco related device:

- a) To any person under the age of eighteen (18) years.
- b) By any other means, or to any person, prohibited by Federal, State, or other local law, ordinance provisions, or other regulation.

Subd. 2. Self-service Sales of Single Packages - Restricted.

- a) No person shall offer for sale single packages of cigarettes or smokeless tobacco in open displays, which are accessible to the public without the intervention of a store employee.
- b) Cartons and other multi-pack units may be offered and sold through open displays accessible to the public.
- c) On the effective date of Federal Regulations pertaining to self-service sales of tobacco products (Code of Federal Regulations, title 21, part 897.16(c)), paragraph (b) above expires, and is replaced by incorporation of the federal regulations into Hopkins City Code.
- d) This subdivision shall not apply to retail stores, which derive at least 90 percent of their revenue from tobacco, and tobacco-related products and which cannot be entered at any time by persons younger than 18 years of age.
- e) Prior to offering for sale any single packages of tobacco products by self-service merchandising, a licensee must file with the city clerk a statement from a certified public accountant that shows both total gross sales and total sales from tobacco or related products. Said statement must also be filed with the city clerk yearly on or before the renewal date of the license.

Subd. 3. Vending Machine Sales. It shall be unlawful for anyone licensed under this ordinance to allow the sale of tobacco, tobacco products, or tobacco related devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.

1155.08 Smoking Prohibited. It shall be unlawful for any person to light, inhale, or exhale tobacco, tobacco products, or tobacco related devices in any Retail Establishment, or for any Tobacco License Holder or Licensee, or their employees, to permit the same. The vaping of e-cigarettes at a Retail Establishment and the sampling of vaping of e-cigarettes at a licensed vaping establishment are exempt from prohibition under this section.

1155.09. Responsibility. All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, or tobacco related devices on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder.

1155.10. Vaping Establishment Licenses. No person shall operate a business for the sampling and vaping of e-cigarettes without first having obtained a license from the city to do so. A vaping establishment license is required in addition to a Tobacco Sales license under Section 1155.05. One Vaping Establishment License may be granted a year. No Vaping Establishment License will be issued to any business that allows persons under the age of eighteen (18) to enter the establishment. The City will not consider new Vaping Establishment License applications until a license is available through either relinquishment, nonrenewal, or revocation.

Subd. 1. Application. An application for a vaping establishment license shall be made on a form provided by the city. The application shall contain 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 city clerk shall forward the application to the council for action at its next regularly scheduled council meeting. If the clerk shall determine that an application is incomplete, the city clerk shall return the application to the applicant with notice of the information necessary to make the application complete.

Subd. 2. Denial. 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:

- a) The applicant is under the age of 18 years.
- b) The applicant has been convicted within the past five years of a violation of any provisions of this ordinance or a violation of Federal, State or local law, ordinance provision, or other regulation relating to tobacco, tobacco products, or tobacco related devices.
- c) The applicant or license holder has had a license to sell tobacco, tobacco products or tobacco related devices revoked within the preceding twelve (12) months of the date of application.
- d) The applicant fails to provide any information required on the city license application, or provides false or misleading information.
- e) The applicant or license holder has outstanding fines, penalties or property taxes owed to the city.
- f) The applicant or license holder does not have a Tobacco Sales License under Section 1155.05.

Subd. 3. Action. The council may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the council shall approve the license, the city clerk shall issue the license to the applicant. If the council denies the license, notice of denial shall be given to the applicant along with notice of the applicant's right to appeal the council's decision.

Subd. 4. Term. All licenses issued under this ordinance shall expire on June 30 of each calendar year.

Subd. 5. Revocation or Suspension. Any license issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties of this ordinance.

Subd. 6. 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.

Subd. 7. 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. 8. Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premises.

Subd. 9. Renewals. The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for renewal shall be made at least thirty (30) days but no more than sixty (60) 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 licensee and shall not entitle the licensee to an automatic renewal of the license. Upon the expiration of the license that is not renewed, the City may consider applications for the license.

Subd. 10. Fees. No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The fee for a license under this ordinance shall be set by city council resolution.

Subd. 11. Prohibited Sampling or Vaping. No licensee or employee thereof may permit sampling and vaping of e-cigarettes at a vaping establishment to any person under the age of eighteen (18) years.

Subd. 12. Responsibility. All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sampling and vaping of e-cigarettes on the licensed premises, and the sale of such an item or permission to vape or sample such item by an employee shall be considered a sale by the license holder.

1155.11 Compliance Checks and Inspections. All licensed premises (Tobacco Sales or Vaping Establishment) shall be open to inspection by the city police or other authorized city official during regular business hours. At least once per calendar year, an unannounced compliance check shall be conducted at each licensed retail establishment. 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.

Subd. 1. Use of Minor. The compliance check shall be conducted by engaging, with written consent of their parents or guardians, minors over the age of fifteen (15) years but less than eighteen (18) years, to enter the licensed premise to attempt to purchase tobacco, tobacco products, or tobacco related devices, or to sample or vape e-cigarettes.

- a) Minors used for the purpose of compliance checks shall be supervised by city designated law enforcement officers or other designated city personnel.
- b) Minors used for the purpose of compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, or tobacco related devices when such items are obtained as a part of the compliance check.
- c) No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age. All minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee, agent or employee and shall produce identification, if in the minor's immediate possession, for which the minor is asked. (Amended by Ord. 2010-1020)

Subd. 2. Failure of Compliance Check. If a retail establishment fails a compliance check, a follow-up, unannounced compliance check shall be made within six (6) months or before the end of the calendar year.

Subd. 3. Results of Compliance Checks. Results of the compliance checks shall be reported to the City Council annually.

1155.12. Violations and Penalties. Unless otherwise provided, the following acts shall be a violation of this ordinance.

Subd. 1. Illegal Sales. It shall be a violation of this ordinance for any person to sell or otherwise provide any tobacco, tobacco product, or tobacco related device to any minor.

Subd. 2. Illegal Sampling/Vaping. It shall be a violation of this ordinance for any person to allow the sampling or vaping of e-cigarettes by any minor at a licensed vaping establishment.

Subd. 3. Illegal Possession. It shall be a violation of this ordinance for any minor to have in possession any tobacco, tobacco product, or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check.

Subd. 4. Illegal Use. It shall be a violation of this ordinance for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, or tobacco related device.

Subd. 5. Illegal Procurement. It shall be a violation of this ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, or tobacco related device, and it shall be a violation of this ordinance for any person to purchase or otherwise obtain such items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product, or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check.

Subd. 6. Use of False Identification. It shall be a violation of this ordinance 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.

Subd. 7. Violation of State or Federal Laws and Regulations. A violation of state or federal law or regulations related to tobacco, tobacco products, or tobacco-related devices (including, but not limited to, Minn. Stat. §§ 144.411, Minn. Stat. Ch. 461, Minn. Stat. §§ 609.685-609.6855) shall constitute a violation of this ordinance.

1155.13. Administrative Penalty Procedure.

Subd. 1. Notice. Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his or her right to be heard on the allegation.

Subd. 2. Hearings. If, within 20 days after receipt of a citation, a person accused of violating this ordinance so requests, a hearing shall be scheduled, the date, time and place of which shall be published and provided to the accused violator.

Subd. 3. Hearing Officer. The City Council or such other person as the Council may by resolution designate, shall serve as the hearing officer.

Subd. 4. Decision. If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under Section 1155.19 of this ordinance, 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, such findings shall be recorded and a copy provided to the acquitted accused violator.

Subd. 5. Appeals. Appeals of any decision made by the hearing officer shall be filed in the district court for the city in which the alleged violation occurred.

Subd. 6. Misdemeanor Prosecution. Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this ordinance. If the City elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.

Subd. 7. Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

1155.14. Penalties.

Subd. 1. Licensees and Employees. Any licensee, and any employee of a licensee, found to have violated this ordinance, shall be charged an administrative penalty as follows:

- a) \$75 for a first violation of this ordinance;
- b) \$200 for a second violation at the same licensed premises within 24 months of the initial violation;
- c) \$250 for a third violation at the same location within 24 months of the initial violation, and the license shall be suspended for not less than seven (7) days.

Subd. 2. Other Individuals. Other individuals, other than minors regulated by subdivision 3 of this Subsection, found to be in violation of this ordinance, shall be charged an administrative penalty of \$50.

Subd. 3. Minors. Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase tobacco, tobacco products, or tobacco related devices, shall be charged an administrative penalty of \$25 per violation.

1155.15. Exceptions and Defenses. Nothing in this ordinance shall prevent the providing of tobacco, tobacco products, or tobacco related devices to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this ordinance for a person to have reasonably relied on proof of age as described by State law.

1155.16. 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.

(Section 1155 was amended by Ord. No. 97-805; Ord. 2003-899; Ord. No. 2010-1020, Ord. No. 2011-1041 and Ord. No. 2014-1081)