

## ORDINANCE

By Vetaw

### **Amending Title 13, Chapter 281 of the Minneapolis Code of Ordinances relating to Licenses and Business Regulations: Tobacco Dealers.**

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That the Minneapolis Code of Ordinances, Chapter 281 Tobacco Dealers, be amended in the form of a complete revision to read as follows:

#### **CHAPTER 281. - COMMERCIAL TOBACCO AND RELATED PRODUCTS**

**281.10. License required.** No person shall, directly or indirectly or by means of any device, offer or expose for sale, sell, exchange, barter, dispose of or give away, or cause to be offered or exposed for sale, exchanged, bartered, disposed of or given away, any tobacco products at any place in the city without being licensed under this chapter. The sale of licensed products by vending machine shall require a license under this chapter. In the case of a vending machine, the license shall be held by the person or organization which has control and supervision of the premises.

**281.20. Definitions.** As used in this chapter, the following terms shall mean:

*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 which 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.

*Cigar* means any roll of tobacco that is wrapped in tobacco leaf or in any substance containing tobacco, with or without a tip or mouthpiece, which is not a cigarette as that term is defined in Minnesota Statutes Section 297F.01 , Subd. 3, as it may be amended from time to time.

*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 twenty-one (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.

*Electronic delivery device* means any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, 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 authorized by the United States Food and Drug Administration to be marketed and for the sale as "drugs," "devices," or "combination products," as defined in the Federal Food, Drug, and Cosmetic Act.

*Flavored tobacco product* means any licensed product that contains a taste or aroma, other than the taste or aroma of tobacco, that is distinguishable by an ordinary consumer either prior to or during consumption of a tobacco product, including, but not limited to, tastes or aromas of menthol, mint, wintergreen, 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 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 a taste or aroma other than tobacco may be one (1) 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.

*Imitation product* means any edible non-tobacco product designed to resemble a tobacco product, or any non-edible tobacco product designed to resemble a tobacco product and intended to be used by children as a toy. Imitation tobacco product includes, but is not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling chewing tobacco, and shredded beef jerky in containers resembling tobacco snuff tins. Imitation product does not include electronic delivery devices or nicotine or lobelia delivery products.

*Licensed product* is the term that collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

*Moveable place of business* means any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and that is not a fixed address or other permanent type of structure licensed for over-the-counter sales transactions.

*Nicotine or lobelia delivery product* means any product containing or delivering nicotine or lobelia intended for human consumption, whether natural or synthetic, 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 authorized by the United States 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.

*Self-service merchandising* means open displays of licensed products in any manner where any person shall have access to the licensed products without the assistance or intervention of the licensee or licensee's employee. The assistance or intervention shall entail the actual physical exchange of the licensed products or between the customer and the licensee or employee.

*Self-service method* means a method of sales of licensed products whereby the customer does not need to make a verbal or written request to an employee of the licensed premises in order to receive the licensed product and no physical exchange of the licensed product occurs between the customer and the licensee, or an employee or agent of the licensee.

*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. A tobacco product;
- b. Cigars;
- c. Cheroots;
- d. Stogies;

- e. Perique;
- f. Granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco;
- g. Snuff;
- h. Snuff flour;
- i. Cavendish;
- j. Plug and twist tobacco;
- k. Fine cut and other chewing tobaccos;
- l. Shorts;
- m. Refuse scraps, clippings, cuttings, and sweepings of tobacco; and
- n. Other kinds and forms of tobacco.

Tobacco excludes any nicotine cessation product that has been authorized by the United States 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.

*Tobacco products shop* means a retail establishment with an entrance door opening directly to the outside that derives at least ninety percent (90%) of its gross revenue from the sale of licensed products, loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. "Tobacco products shop" does not include a tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license.

*Tobacco-related devices* mean a pipe, rolling papers, or other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, ingesting, absorbing, or smoking of tobacco or licensed products.

*Vending machine* means a mechanical, electric, or electronic device, regardless of locking mechanism, which is used for the purposes of dispensing the licensed products.

**281.30. Application for license; referral and action.** Any person desiring to obtain a tobacco dealers license shall file with the licensing official a written application stating the full name and address of the applicant for such license, and the fixed location of the building or buildings and the part or portions thereof intended to be used by the applicant under such license. No license shall be granted for the purpose of dispensing licensed products from a motor vehicle.

**281.40. Prohibited sales.** (a) No person shall sell licensed products in any manner other than by the package or multiples thereof to which a stamp has been affixed in accordance with Minnesota Statutes Section 297F.08, Subd. 1.

(b) Self-service methods of sales and self-service methods of merchandising licensed products as defined in Section 281.20 of this Code, shall be prohibited.

(c) Every person applying for a license to sell licensed products at retail shall certify on the annual license application that the person has implemented a training program for employees regarding laws related to the sale of licensed products and has trained all employees to comply with state and federal laws and/or regulations regarding the sale of licensed products.

(d) Self-service restrictions shall not apply to tobacco products shops.

(e) No operator or employee of a tobacco products shop shall allow, permit, or suffer any person younger than twenty-one (21) years of age to enter or be present upon the licensed premises. It shall be the duty of the operator and operator's employees to identify and ascertain the age of any such person and to refuse admittance to any person not of age.

(f) No person shall sell, offer for sale, give away, barter, exchange, or otherwise deal in flavored tobacco products or samples of such products. This subsection does not apply to tobacco products shops or to a licensed tobacco dealer that otherwise meets the definition of and requirements applicable to a tobacco products shop except for the lack of an entrance door opening directly to the outside but which has an entrance door opening directly to the public area of a skyway, mall, or other space that is not part of the premises of another business establishment. This subsection does not apply to licensed off-sale liquor stores with regard to menthol, mint, or wintergreen flavored tobacco products, provided that such an establishment does not permit any persons under the age of twenty-one (21) to be present within the establishment unaccompanied by a parent or guardian.

(g) No person may sell, offer for sale, or otherwise distribute cigars in original packages containing three (3) or fewer cigars for a sale price, after any coupons, multipack or buy-one/get-one promotions, or any other discounts are applied and prior to applicable sales taxes being imposed, of less than two dollars and sixty cents (\$2.60) per cigar contained within. In addition, no person may sell, offer for sale, or otherwise distribute cigars in original packages of four (4) or more cigars for a sale price, after any coupons, multipack or buy-one/get-one promotions, or any other discounts are applied and prior to applicable sales taxes being imposed, of less than ten dollars and forty cents (\$10.40) per package.

(h) No person may sell or offer for retail sale cigarette packages or cartons for a sales price, prior to applicable sales taxes being imposed, of less than ten dollars (\$10.00) per pack.

(i) No person may sell or offer for retail sale moist snuff retail packages or multipacks for a sales price, prior to applicable sales taxes being imposed, of less than ten dollars (\$10.00) per 1.2 ounce package. No person may sell or offer for retail sale any smokeless tobacco/moist snuff unless it is sold in a package of at least 1.2 ounces minimum package size. The price floor for packages larger than 1.2 ounces shall be computed by adding two dollars and fifty cents (\$2.50) for each 0.3 ounces or any fraction thereof in excess of 1.2 ounces, excluding all applicable taxes.

(j) No person may sell or offer for sale or otherwise distribute snus for a sales price, prior to applicable sales taxes being imposed, of less than ten dollars (\$10.00) per 0.32 ounce package. No person may sell or offer for retail sale any snus unless it is sold in a package of at least 0.32 ounces minimum pack size. The price floor for packages larger than 0.32 ounces shall be computed by adding two dollars and fifty cents (\$2.50) for each 0.08 ounces or any fraction thereof in excess of 0.32 ounces, excluding all applicable taxes.

(k) The licensing official may annually modify by rule the minimum prices described in this section to account for changes in the Minneapolis-St. Paul-Bloomington consumer price index, adjusted for inflation.

(l) *Imitation tobacco products.* No person shall sell, offer to sell, or otherwise distribute any imitation tobacco products within the city.

(m) *Liquid packaging.* No person shall sell or offer to sell any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device, in packaging that is not child resistant. Upon request by the licensing official or designee, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

(n) *Coupon and price promotion.* No person shall accept or redeem any coupon, price promotion, or other instrument or mechanism, whether in paper, digital, electronic, mobile, or any other form, that provides any licensed products to a consumer at no cost or at a price that is less than the non-discounted, standard price listed by a retailer on the item or on any related shelving, posting, advertising, or display at the location where the item is sold or offered for sale, including all applicable taxes.

**281.50. Sales to persons under the age of twenty-one (21).** (a) No person shall sell any licensed product to any person under the age of twenty-one (21).

(b) *Verification.* Licensees must verify by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is at least twenty-one (21) years of age. Verification is not required for a person over the age of thirty (30). That the person appeared to be thirty (30) years of age or older does not constitute a defense to a violation of this subsection.

(c) *Signage.* Notice of the legal sales age, age verification requirement, and possible penalties for underage sales must be posted prominently and in plain view at all times at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the city, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.

**281.60. Distribution of free licensed products restricted.** No person in the business of selling or promoting licensed products or agent or employee of any such person, shall distribute licensed products free to any person as provided in Minnesota Statutes, Section 325F.77(4).

**281.70. Sampling.** Pursuant to the authority granted to the City of Minneapolis by Minnesota Statutes, Section 144.417, the operator of any tobacco products shop licensed under this chapter is hereby prohibited from any of the following:

(1) *Samples prohibited.* No person shall distribute samples of any licensed product free of charge or at a nominal cost. The distribution of licensed products as a free donation is prohibited.

(2) *Smoking prohibited.* Smoking, including smoking for the purpose of the sampling of licensed products, is prohibited within the indoor area of any retail establishment licensed under this chapter.

**281.80. Revocation, suspension, or non-renewal.** (a) Every license holder under this chapter will either be subject to a monetary penalty or in extenuating circumstances have their license revoked, suspended, or not renewed by the city council according to the penalty schedule as provided in section 281.90, for any of the following reasons:

(1) Violation of section 281.50 or any other provision of this chapter.

(2) Violation of Minnesota Statutes, Section 609.685 relating to sale of licensed products to persons under twenty-one (21) years of age.

(3) Failure of the license holder to monitor, supervise, and control the purchase of licensed products from a vending machine so as to prevent the purchase of licensed products from a vending machine by persons under twenty-one (21) years of age.

(4) Other good cause related to the business of selling or furnishing licensed products.

(b) No license may be issued pursuant to this chapter for a location or place of sale if a tobacco license previously issued for that location or place of sale has been revoked for any reason other than nonpayment of license fees within the past five (5) years.

**281.90. Presumptive penalty for licensee.** (a) *Purpose.* The purpose of this section is to establish a standard by which the city council and the licensing official determine the number of fines, length of license suspensions, and the propriety of revocations for licensees. These penalties are presumed to be appropriate for every case; however, the council may deviate therefrom in an individual case where the council finds and determines that there exist substantial and compelling reasons which make it appropriate to do so, except, the council may not deviate below statewide minimum penalties for licensees. When deviating from these standards, the council shall provide written reasons that specify why the penalty selected was more appropriate.

(b) *Presumptive penalties for licensees for violations.* Adverse penalties for licensees for violations or convictions shall be presumed as follows:

(1) *Sale to a person under twenty-one (21) years of age.*

a. First appearance results in a five hundred dollar (\$500.00) fine.

b. Second appearance results in a one thousand dollar (\$1,000.00) fine and a seven (7) day suspension.

c. Third appearance results in a two thousand dollar (\$2,000.00) fine and a one hundred twenty (120) day suspension.

d. Fourth appearance results in license revocation.

(2) *Display, possession, or multiple incidents of sales of single cigarettes or loosies.*

a. First appearance results in a five hundred dollar (\$500.00) fine.

b. Second appearance results in a one thousand dollar (\$1,000.00) fine and a seven (7) day suspension.

c. Third appearance results in a two thousand dollar (\$2,000.00) fine and a one hundred twenty (120) day suspension.

d. Fourth appearance results in license revocation.

(3) *Display, possession, or multiple incidents of sales of menthol tobacco products.*

- a. First appearance results in a five hundred dollar (\$500.00) fine.
- b. Second appearance results in a one thousand dollar (\$1,000.00) fine and a seven (7) day suspension.
- c. Third appearance results in a two thousand dollar (\$2,000.00) fine and a one hundred twenty (120) day suspension.
- d. Fourth appearance results in license revocation.

(4) *Display, possession, or multiple incidents of flavored tobacco products.*

- a. First appearance results in a five hundred dollar (\$500.00) fine.
- b. Second appearance results in a one thousand dollar (\$1,000.00) fine and a seven (7) day suspension.
- c. Third appearance results in a two thousand dollar (\$2,000.00) fine and a one hundred twenty (120) day suspension.
- d. Fourth appearance results in license revocation.

(c) *Administrative enforcement and adverse license hearing process applies.* The existing administrative enforcement and hearing process provided by Chapter 2 of this Code, as well as the adverse license action evidentiary hearing process provided pursuant to Section 259.255 of this Code, shall apply to enforcement actions under this chapter.

(d) *Computation of time.* Except as otherwise provided by law, subsequent violations are subject to the following:

(1) *Second, third, and fourth appearances.* A second violation within twenty-four (24) months shall be treated as a second appearance, a third within twenty-four (24) months treated as a third appearance, and a fourth within twenty-four (24) months treated as a fourth appearance for the purpose of determining the presumptive penalty.

(2) Any appearance not covered by subsection (1) above shall be treated as a first appearance.

(3) Measurement of the twenty-four (24) month period shall be as follows:

- a. The beginning date shall be the earliest violation's date of appearance before the council; and
- b. The ending date shall be the date of the new violation.

In case of multiple new violations, the ending date to be used shall be the date of the violation last in time.

**281.100. Tobacco vending machines restricted.** (a) No vending machine selling licensed products may be located in facilities that can be entered at any time by persons under the minimum licensed products purchase age as established by this chapter.

(b) Tobacco vending machine sales shall not be permitted incidental to an on-sale alcoholic beverage license or off-sale liquor license. The establishment shall obtain a separate tobacco dealer's license under this chapter.

**281.110. Compliance checks and inspections.** Sections 281.30 through 281.90 shall be administered and enforced by and through the licensing official of the City of Minneapolis. All compliance operations to ensure adherence to sections 281.50, 281.80(2) and 281.80(3) shall be conducted by the licensing official or the Police Department.

All licensed premises must be open to inspection by law enforcement or other authorized city officials during regular business hours. From time to time, but at least once per year, and within thirty (30) days of a failed compliance check, 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 seventeen (17) years of age, but under the age of twenty-one (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 eighteen (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.

**281.120. Location restrictions.** (a) No tobacco dealers license shall be issued or granted for any use established in the CM1 Corridor Mixed Use (CM1) zoning district unless all of the following requirements are met:

(1) The use is a full service grocery store in compliance with the minimum square footage sales area and staple food requirements of Section 203.20;

(2) The use is not an accessory use grocery store as defined in Section 203.10; and

(3) The use is not a tobacco product shop as is defined in Section 281.20.

(b) Except in the Downtown Zoning Districts (DT1, DT2), no tobacco dealers license shall be issued for an establishment authorized to sell flavored tobacco products pursuant to Section 281.40(f), for a location, the main entrance of which is within a radius of two thousand (2,000) feet from the main entrance of an existing establishment holding a license to sell licensed products. Any such licenses in existence on August 1, 2019, may be renewed or reissued for such locations without regard to such distance limitations, unless such use has been legally discontinued. A relocation of such an existing establishment, currently within two thousand (2,000) feet of a second existing location, to a new location within the same two thousand (2,000) foot radius and no closer to the second location shall be permitted provided, that on the date of application for the new location, the applicant is the holder of the tobacco dealers license at the location to be discontinued.