

CHAPTER 4
BUSINESS LICENSING AND REGULATION
GENERALLY

Section 4.34. **Tobacco Licensing and Regulation.**

Subd. 1. **Purpose.** The City hereby adopts the Minnesota legislature's findings, as stated in Minn. Stat. § 144.391, that: (1) smoking causes premature death, disability, and chronic disease, including cancer and heart disease, and lung disease; (2) smoking related diseases result in excess medical care costs; and (3) smoking initiation occurs primarily in adolescence. The City also adopts the legislature's desire to prevent young people from starting to smoke, to encourage and assist smokers to quit, and to promote clean indoor air. Because the City recognizes that many persons under the age of ~~18-21~~ years purchase or otherwise obtain, possess, and use tobacco, tobacco products, tobacco related devices, electronic delivery devices, and nicotine and lobelia delivery products and that such sales, possession, and use are violations of ~~both~~ State and/or Federal laws; and pursuant to the ~~state~~ mandates contained in ~~Minnesota Statutes Section tstate and federal law,~~ this ordinance is intended to regulate the sale, possession, and use of tobacco, tobacco products, tobacco related devices, electronic delivery devices, and nicotine and lobelia delivery products for the purpose of enforcing and furthering existing laws and state mandates, and to protect ~~minors-the public~~ against the serious effects associated with the ~~illegal~~ use of tobacco, tobacco products, tobacco related devices, electronic delivery devices, and nicotine and lobelia delivery products ~~and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke as stated in Minn. Stat. §144.391.~~

Subd. 2. **Definitions and Interpretations.** Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice-versa. The term "shall" means mandatory and the term "may" means permissive. The following terms shall have the definitions given to them:

A. Tobacco or Tobacco Products. "Tobacco" means cigarettes; 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, 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 components, part, or accessory of a tobacco product. Tobacco excludes any tobacco product that has been approved by the United States Food and Drug Administration (USFDA) for the sale as a tobacco cessation product and sold solely for such an approved purpose.

B. Tobacco Related Devices. "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 vapors of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately

C. Self-Service Merchandising. "Self-Service Merchandising" means open displays of tobacco, tobacco products, tobacco related devices, electronic delivery devices, and nicotine and lobelia delivery products in any manner where any person shall have access to the tobacco, tobacco products, tobacco related devices electronic delivery devices, and nicotine and lobelia delivery products without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product, tobacco related device, electronic delivery devices, or nicotine and lobelia delivery products between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

D. Vending Machine. "Vending Machine" shall mean any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine and lobelia delivery products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco products, tobacco related device, electronic delivery devices, or nicotine and lobelia delivery products. A device by which licensee or licensee's employee must insert the payment in order to operate the machine is not a vending machine for the purpose of this definition.

E. 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 in this subdivision shall

not be considered individually packaged.

F. Minor. "Minor" shall mean any natural person who has not yet reached the age of eighteen (18) years.

G. Retail Establishment. "Retail Establishment" shall mean any place of business where tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine and lobelia delivery products are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, and restaurants.

H. Moveable Place of Business. "Moveable Place of Business" shall refer to any retail business whose physical location is not permanent, including, but not limited to, any retail business that is operated from a kiosk, other transportable structure, or a motorized or nonmotorized vehicle.

I. Sale. A "sale" shall mean any transfer of goods for money, trade, barter, or other consideration.

J. Compliance Checks. "Compliance checks" shall mean the system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine and lobelia delivery products 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 attempted to purchase tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine and lobelia delivery products for educational, research and training purposes as authorized by State and Federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate Federal, State, or local laws and regulations relating to tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine and lobelia delivery products.

K. Electronic Delivery Device. "Electronic delivery device" means any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. 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.

L. Child-Resistant Packaging. "Child-Resistant Packaging" is packaging that meets the definition as set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, when tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.

M. Nicotine or Lobelia Delivery Products. "Nicotine or Lobelia Delivery Products" are 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, not including any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

Subd. 3. License. No person shall sell or offer to sell any tobacco, tobacco products, tobacco related device, electronic delivery devices, or nicotine and lobelia delivery products without first having obtained a license to do so from the city.

A. Application. An application for a license to sell tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine and lobelia delivery products shall be made on a form provided by the City. The application shall contain the 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 Administrator shall forward the application to the City Council for action at its next regularly scheduled council meeting. If the City Administrator shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

B. Action. The City 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 Administrator shall issue the license to the applicant. If the council denies the license, notice of the denial shall be given to the applicant along with notice applicant's right to appeal the council's decision.

C. Term. All licenses issued under this ordinance shall be valid for one calendar year from the date of issue.

D. Revocation or Suspension. Any license issued under this ordinance may be revoked or suspended as provided in Section 4.34, subdivisions 11 or 12 of this ordinance.

E. 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 without the prior approval of the council.

F. 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.

G. Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

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

I. A determination by the City to deny, suspend, revoke or not renew any license under this section may be appealed to the City Council of Alexandria by filing with the City Administrator a written Notice of Appeal within fifteen (15) days of the date on which notice of the City's denial, suspension, or revocation is mailed to the licensee. In that event, the appeal will be heard by the Council at its next meeting occurring at least fifteen (15) days after the filing of the Notice of Appeal. At any appeal of a determination by the City under this Ordinance, the licensee or applicant, or an attorney representing said party, may appear and make a presentation to the City Council. The licensee or applicant shall present to the City Council the basis for the determination being appealed. After the hearing, the Council may uphold, reverse or modify the prior decision based upon the provisions of this Ordinance and upon the protection of the public health, safety or general welfare. The City Council shall issue written findings and determination within thirty-one (31) days of the hearing, unless the Council extends that time for good cause. A decision of the City Council made following an appeal as set forth herein may be appealed by Writ of Certiorari to the Court of Appeals of the State of Minnesota pursuant to its Rules of Civil Appellate Procedure and Minnesota Statutes.

Source: Ord. 783-2nd Series

Effective Date: 05/29/18

Subd. 4. Fees. No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The fee for a tobacco license shall be set by Ordinance of the City Council.

Subd. 5. Basis for Denial of License. The following shall be grounds for denying the issuance or renewal of a license under this ordinance; 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. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this section:

A. The applicant is under the age of ~~18-21~~ years.

B. The applicant has been convicted with the past five years of any violation of a Federal, State, or local law, ordinance provision, or other regulation relating to tobacco or tobacco products, tobacco related devices, electronic delivery devices, or nicotine and lobelia delivery products.

C. The applicant or any entity under common ownership, operation, or control by the applicant has had a license in the City to sell tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine and lobelia delivery products revoked or has failed four or more compliance checks.

Source: Ord. 783-2nd Series

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D. The applicant fails to provide any information required on the application, or provides false or misleading information.

E. The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license.

Subd. 6. Prohibited Sales.

A. ~~Minors~~ Persons Under 21. No person shall sell, offer to sell or otherwise provide any tobacco, tobacco products, tobacco related device electronic delivery devices, or nicotine and lobelia delivery products to any person under the age of ~~eighteen-twenty-one~~ (~~18~~21) years.

B. Self-service Sales. No person shall sell, offer to sell or otherwise provide any tobacco or tobacco related devices, electronic delivery devices, or nicotine and lobelia delivery products in open displays which are accessible to the public without the intervention of a store employee that includes a physical exchange of the tobacco products, tobacco devices, electronic delivery devices, or nicotine and lobelia delivery products. This shall not apply to retail establishments which derive at least 90 percent of their revenue from tobacco and tobacco related devices, electronic delivery devices, or nicotine and lobelia delivery products and where the retailer ensures that no person younger than ~~18—21~~ years of age is present, or permitted to enter at any time.

C. Controlled Substances. No person shall sell, offer to sell or otherwise provide any tobacco, tobacco products, tobacco related device electronic delivery devices, or nicotine and lobelia delivery products containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process.

D. Sampling. No person shall distribute any tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia products free of charge.

E. Other Prohibitions. No person shall sell, offer to sell or otherwise provide any tobacco, tobacco product, tobacco related device, electronic delivery device, or nicotine and lobelia delivery product 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.

F. Vending Machines. No person shall allow the sale of tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.

~~Source: Ord. 774-2nd Series~~
~~Effective Date: 10/23/17~~

Subd. 7. Liquid Packaging.

A. The sale of any liquid, whether or not such liquid contains nicotine, that is intended for human consumption and use in an electronic delivery device that is not contained in

packaging that is child-resistant is prohibited. All licensees under this chapter must ensure that any liquid intended for human consumption and use in an electronic delivery device is sold in child-resistant packaging.

B. A licensee that fails to comply with this section is subject to administrative penalties as defined in Section 4.34, Subdivision 11(B).

Subd. 8. Kiosk Sales Prohibited. No person shall sell tobacco, tobacco-related devices, or electronic delivery devices as defined in Minnesota Statutes 609.685, subdivision 1, or nicotine or lobelia delivery products as described in section 609.6855 from a moveable place of business as defined in Section 4.34, Subd. 2(H).

Subd. 9. Responsibility. All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, ~~tobacco~~tobacco related devices, electronic delivery devices, or nicotine and lobelia delivery production the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the City from also subjecting the employee to whatever penalties are appropriate under this Ordinance, State or Federal law, or other applicable law or regulation.

Subd. 10. Compliance Checks and Inspections. All licensed premises shall be open to inspection by the City police or other authorized City official during regular business hours. From time to time, but at least once per year, the City shall conduct compliance checks by engaging, with the 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, tobacco related devices, electronic delivery devices, or nicotine and lobelia delivery products. IN addition the City may conduct compliance checks by engaging persons who are at least eighteen (18) years of age but less than twenty-one (21) years of age, to enter the licensed premise to attempt to purchase tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine and lobelia delivery ~~Minors~~ Persons products. Persons who are used for the purpose of compliance checks shall be supervised by City designated law enforcement officers or other designated City personnel. ~~Minors~~ Persons under 21 years of age who are used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine and lobelia delivery products when such items are obtained as a part of the compliance check. No ~~minor~~ person under

21 years of age who is used in compliance checks shall attempt to use a false identification misrepresenting the ~~minor's-person's~~ age, and all ~~minors-persons~~ lawfully engaged in a compliance check shall

answer all ~~questioned-questions~~ about the ~~minor's-person's~~ age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. 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. 11. Other Illegal Acts. Unless otherwise provided, the following acts shall be a violation of this Ordinance:

A. Illegal Possession. It shall be a violation of this ordinance for any minor to have in his or her possession any tobacco, tobacco product, tobacco related device electronic delivery device, or nicotine and lobelia delivery product. This subdivision shall not apply to minors lawfully involved in a compliance check.

B. Illegal Use. It shall be a violation of this ordinance for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, tobacco related device electronic delivery device, or nicotine and lobelia delivery product.

C. Illegal Procurement. It shall be a violation of this ordinance for any ~~minor-person~~ under 21 years of age to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, tobacco related device, electronic delivery devices, or nicotine and lobelia delivery products and it shall be a violation of this ordinance for any person to purchase or otherwise obtain such items on behalf of a ~~minor-person~~ under 21 years of age. It shall further be a violation for any person to coerce or attempt to coerce a ~~minor-person~~ under 21 years of age to illegally purchase or otherwise obtain or use any tobacco, tobacco product, tobacco related device electronic delivery devices, or nicotine and lobelia delivery products. This subdivision shall not apply to ~~minors-persons~~ under 21 years of age who are lawfully involved in a compliance check.

D. Use of False Identification. It shall be a violation of this ordinance for any ~~minor-person~~ under 21 years of age 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. 12. Violations.

A. Misdemeanor Prosecution. The City may prosecute any violation of this subdivision as a misdemeanor. If the City elects to prosecute the license holder, no administrative penalty shall be imposed.

B. Administrative Process.

1. Notice. If the City chooses to proceed with an administrative review of an alleged violation of this section, the alleged violator shall be notified in writing, either personally or by mail, of the nature of the alleged violation, his or her right to a hearing on the alleged violation and the potential penalties for a violation.

2. Hearing. A person, who receives notice of an alleged violation of this section, may request a hearing on the alleged violation. The hearing request must be in writing and received by the City Administrator within two (2) weeks of the date of the notice. The person requesting the hearing shall be advised of the date, time, and place of the hearing, which will also be published. The hearing shall be recorded. The Mayor shall serve as the Hearing Officer.

3. Decision by the Hearing Officer. The Hearing Officer shall make written findings, which shall be mailed, to the person requesting the hearing and made a part of the hearing record. If the Hearing Officer determines that a violation of this section occurred, the Hearing Officer's findings shall be forwarded to the City Council for determination of the appropriate penalty pursuant to Subdivision 12 of this section.

4. Appeal. Any person found to have violated this section, shall have the right to appeal to Douglas County district court as provided by law.

C. Continued Violation. Each violation and each day a violation occurs shall constitute a separate offense or violation.

Subd. 13. Penalties.

A. Licensee. Any licensee found to have violated this ordinance, or whose employee shall have violated this

ordinance, shall be charged an administrative fine of \$75 for a first violation of this ordinance; \$200 for a second offense at the same licensed premises within a twenty-four month period; and \$250 for a third or subsequent offense at the same location within a twenty-four month period. In addition, upon the third or subsequent offense, the City Administrator shall suspend the license for each location owned, operated or controlled by the licensee for not less than seven days or recommend to the City Council that the license be revoked or not renewed. The administrative penalties noted above are the minimum mandatory penalties, which in no way restrict the City from suspending or revoking a license regardless of the lack of prior violations.

~~Source: Ord. 783-2nd Series~~

~~Effective Date: 05/29/18~~

B. Other Individuals. Other individuals, other than minors regulated by 4.34, Subd. 12. D herein, found to be in violation of this ordinance shall be charged an administrative fee of \$50.

C. Misdemeanor. Nothing in this section shall prohibit the City from seeking prosecution as a misdemeanor for any violation of this ordinance.

D. Minors. The City of Alexandria recognizes that on April 17, 1997, the Judges of the Seventh Judicial District, Douglas County, adopted a policy regarding standard fines for the use or possession of tobacco by minors.

Subd. 14. Exceptions and Defenses. Nothing in this ordinance shall prevent the providing of tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine and lobelia delivery products to a minor-person under 21 years of age 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.

Subd. 15. 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 invalidation or affect the validity and enforceability of any other section or provision of this ordinance.

Subd. 16. Signage. All licensees shall post and display in plain view of the general public on the licensed premise, a sign supplied by the City of Alexandria, which shall state that it is illegal to sell tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine and lobelia

delivery products to anyone under the age of ~~18~~21 years, and that the possession and use of such items by minors is also illegal under both state law and local ordinance. Said signs shall be issued to the licensee along with their license.

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