

ARTICLE II. TOBACCO¹

DIVISION 1. GENERALLY

Sec. 30-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Child-resistant packaging means packaging that meets the definition set forth in Code of Federal Regulations, title 16, section 1700.15(b), and was tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20.

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 article. Compliance checks shall 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 the purpose of investigating or enforcing appropriate federal, state, or local laws and regulations relating to licensed products.

Delivery sale means a sale of licensed products to a consumer for personal consumption when the sale is conducted by any means other than an in-person, over-the-counter sales transaction in a licensed retail establishment. Delivery sales shall include, but are not limited to, the sale of any licensed product when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. Delivery sale includes delivery by licensees or third parties by any means, including curbside pick-up.

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 aerosol or 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.

Flavored products means any licensed products that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during consumption or use of the product or device, including, but not limited to, any taste or smell relating to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, fruit, or any candy, dessert, alcoholic beverage, herb or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer or retailer of a licensed product, or by any person authorized or permitted by the manufacturer or retailer to make or disseminate public statements concerning such products, that a product has or produces a taste or smell other than a taste or smell of tobacco shall constitute presumptive evidence that the product is a flavored product.

¹State law reference(s)—Local regulation of tobacco sales, Minn. Stat. §§ 461.12, 461.19.

Indoor area means all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

Individually packaged means the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products include but are not 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 definition shall not be considered individually packaged.

Licensed products collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

Loosies means the common term used to refer to a single or individually packaged cigarette or any other licensed product that has been removed from its intended retail packaging and offered for sale. The term "loosies" does not include individual cigars with a retail price, before any sales taxes, of more than \$2.00 per cigar.

Moveable place of business refers to any form of business operated out of a truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

Nicotine or lobelia delivery products or devices means any product containing or delivering nicotine, lobelia or any other substance intended for human consumption, or any part of such a product or device, including electronic delivery devices and related products as defined herein, that is not tobacco as defined in this section. Nicotine or lobelia delivery products or devices do not include any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation treatment, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

Retail establishment means any place of business where licensed products are available for sale to the general public. Retail establishments include but are not limited to grocery stores, convenience stores, tobacco products shops, gasoline service stations, bars and restaurants, and drug stores.

Sale means any transfer of goods for money, trade, barter, or other consideration.

Self-service display or 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 the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the licensed products between the customer and the licensee or employee. Self-service display or merchandising does not include vending machines.

Smoking means inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product. Smoking also includes carrying a lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation.

Tobacco or tobacco products mean any substance or item containing tobacco leaf, including but not limited to cigarettes; cigars; pipe tobacco; snuff; fine cut or other chewing tobacco; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff flowers; cavendish; shorts; plug and twist tobaccos; dipping tobaccos; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing, or smoking. Tobacco and tobacco products also include any products 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. Tobacco excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a

tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

Tobacco products shop means a retail establishment with an entrance door opening directly to the outside that derives more than 70 percent of its gross revenue from the sale of licensed products. This includes but is not limited to the sale of 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 means any tobacco products as well as pipes, rolling papers, and other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, ingesting, absorbing, or smoking of tobacco or tobacco products.

Vending machine means any mechanical, electric or electronic, or other type of device which 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 products.

(Code 1986, § 465:05; Ord. No. 916, 2-15-2011; Ord. No. 929, 2-21-2012; Ord. No. 964, § 1, 11-18-2014; Ord. No. 1009, § 1, 1-21-2020)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 30-27. Violations.

- (a) *Notice.* Any person or licensee violating this article may be issued, either personally or by mail, a notice of violation/citation that sets forth the alleged violation, the penalties imposed and timing for payment or serving a suspension, and that informs the alleged violator of his/her right to a hearing on the matter. The notice of violation/citation shall provide notice that a hearing must be requested by the alleged violator within ten business days of the date of issuance of the notice of violation/citation and that such hearing rights shall be waived by the alleged violator and terminated if a hearing is not requested in writing by the alleged violator within the ten business day period. The notice of violation/citation shall provide information on how and where a hearing may be requested, including a contact address and phone number for the city clerk.
- (b) *Hearing.* If a person accused of violating this article so requests in writing filed with the city clerk, a hearing shall be scheduled, the time and place of which shall be published and provided by the city clerk to the accused violator. Hearing requests must be made within ten business days of the issuance of the notice of violation/citation and delivered to the city clerk or other designated city officer. Failure to properly request a hearing within ten business days of the issuance of the notice of violation/citation will terminate the person's right to a hearing and constitute waiver of said right to a hearing. The city clerk or other designated city officer will set the time and place for the hearing. Written notice of the hearing time and place will be mailed or delivered to the accused violator at least ten calendar days prior to the hearing.
- (c) *Hearing officer.* The city council shall serve as the hearing officer or will designate a hearing officer. The hearing officer will be an impartial employee of the city or an impartial person retained by the city to conduct the hearing, if other than the city council.
- (d) *Decision.* If the hearing officer determines that a violation of this article did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under his article, shall be recorded in writing, a copy of which shall be provided to the accused violator by in person or mail delivery as soon as practicable following the hearing date or the date of any continuance, recess or postponement thereof. 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 by in person or mail delivery as soon as practicable. The decision of the hearing officer is final and appealable.

- (e) *Appeals.* Appeals of any decision made by the hearing officer shall be filed in the district court for the county in which the alleged violation occurred. Appeals of any decision made by the hearing officer must be filed in Rice County district court within ten business days of the date of the hearing officer's decision.
- (f) *Misdemeanor prosecution.* In addition to the process contained in this section for civil license violations, violation of this article shall be a criminal misdemeanor offense and may be prosecuted accordingly.
- (g) *Continued violation.* Each violation, and every day in which a violation occurs or continues, shall constitute separate offenses.
- (h) *Hearing costs and expenses.* If the notice of violation/citation is upheld by the hearing officer, the city's actual expenses in holding the hearing up to a maximum of \$1,000.00 shall be paid by the person requesting the hearing and shall be in addition to any penalties imposed. In such event, hearing expenses shall be included as part of the hearing officer's findings and paid at the same time the penalty is paid.
- (i) *Timely payment.* In the event that any imposed penalty or hearing costs and expenses are not timely paid in accordance with the notice of violation/citation or the hearing officer's decision, as applicable, such failure shall serve as grounds for immediate license suspension or revocation as provided in this article.

(Code 1986, § 465:55; Ord. No. 964, § 1, 11-18-2014; Ord. No. 1009, § 1, 1-21-2020)

State law reference(s)—Administrative penalties, Minn. Stat. § 461.12, subds. 2, 3; appeals, Minn. Stat. § 461.12, subd. 7.

Sec. 30-28. Penalties.

- (a) *Licensees.* In addition to any other penalties that may be imposed under this article, any licensee found to have violated this article, or whose employee shall have violated this article, shall be charged an administrative fine, and suspension, as applicable, in the city clerk's notice of violation/citation in accordance with the following schedule:

- (1) First offense: \$250.00.
- (2) Second offense at the same licensed premises within a 24-month period: \$500.00 and a tobacco license suspension of at least three consecutive days.
- (3) Third offense at the same location within a 36-month period: \$2,000.00 and a tobacco license suspension of at least 18 consecutive days.
- (4) Fourth offense at the same location within a 60-month period: \$2,500.00 and a tobacco license revocation for a minimum of one year following a hearing pursuant to sections 30-27 and 30-73.

For the purposes of this section, "within a 24-month period" means a period, two years in duration, which begins to toll on the date of the occurrence of the first violation, and ends two years from the date of the first violation.

Notwithstanding the foregoing and the penalties contained in the city clerk's notice of violation/citation, the hearing officer, following notice and a hearing as provided in section 30-27, may deviate from the administrative penalties provided above herein, by increasing or decreasing such imposed penalties, based upon the hearing officer's findings following consideration of the facts, circumstances, history and evidence presented and such other factors and evidence as the hearing officer deems relevant. A history of repeated violations extending beyond notwithstanding the time periods stated herein may be considered by the hearing officer to impose a longer suspension period or license revocation or non-renewal of a license as provided in this article.

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- (b) *Training.* In addition to any other penalties that may be imposed under this article, any licensee found to have violated the training requirements contained in section 30-62 of this article shall be charged an administrative fine in accordance with the following schedule:
- (1) First offense: \$100.00.
 - (2) Second offense at the same licensed premises within a 24-month period: \$250.00 and a tobacco license suspension of at least three consecutive days.
 - (3) Third offense at the same location within a 36-month period: \$500.00 and a tobacco license suspension of at least 18 consecutive days.
 - (4) Fourth offense at the same location within a 60-month period: \$1,000.00 and a tobacco license suspension of at least 30 consecutive days.
- (c) *Statutory penalties.* If the administrative penalty authorized to be imposed by Minn. Stat. § 461.12, as it may be amended from time to time, differ from that established in this section, then the higher penalty will prevail.
- (d) *Misdemeanor.* Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this article. Prosecution may precede, run consecutively with, or follow any administrative license action.

(Code 1986, § 465:60; Ord. No. 964, § 1, 11-18-2014; Ord. No. 1009, § 1, 1-21-2020)

Sec. 30-29. Purpose.

Because the city recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use licensed products, including, but not limited to, tobacco products, tobacco-related devices, and nicotine or lobelia delivery products or devices, and such sales, possession, and use are violations of both state and federal laws; because studies have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government, this article shall be intended to regulate the sale, possession, and use of the licensed products for the purpose of enforcing and furthering existing laws; to protect minors against the serious effects associated with the illegal use of the licensed products; and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in Minn. Stat. § 144.391, as it may be amended from time to time. In making these findings, the city council accepts the conclusions and recommendations of the U.S. Surgeon General reports, *E-cigarette Use Among Youth and Young Adults* (2016), *The Health Consequences of Smoking—50 Years of Progress* (2014) and *Preventing Tobacco Use Among Youth and Young Adults* (2012); the Centers for Disease Control and Prevention in their studies, *Tobacco Use Among Middle and High School Students—United States, 2011-2015* (2016), the Center for Disease Control in their study "Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997," and of the following medical professionals in these medical journals: Khuder SA, et al., "Age at Smoking Onset and its Effect on Smoking Cessation," *Addictive Behavior* 24(5):673-7, September-October 1999; D'Avanzo B, et al., "Age at Starting Smoking and Number of Cigarettes Smoked," *Annals of Epidemiology* 4(6):455-59, November 1994; Chen, J & Millar, WJ, "Age of Smoking Initiation: Implications for Quitting," *Health Reports* 9(4):39-46, Spring 1998; Everett SA, et al., "Initiation of Cigarette Smoking and Subsequent Smoking Behavior Among U.S. High School Students," *Preventive Medicine*, 29(5):327-33, November 1999; Age at smoking onset and its effect on smoking cessation. *Addictive Behaviors*, 24(5), 673-677; Luke, D. A., Hammond, R. A., Combs, T., Sorg, A., Kasman, M., Mack-Crane, A., Henriksen, L. (2017). Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density. *American Journal of Public Health*, 107(5), 740-746; Minnesota Department of Health. (2018). Data Highlights from the 2017 Minnesota Youth

Tobacco Survey. Saint Paul, MN; Tobacco Control Legal Consortium. (2006). The Verdict Is In: Findings from United States v. Phillip Morris, The Hazards of Smoking. University of California—San Francisco. Truth Tobacco Industry Documents, <https://www.industrydocumentslibrary.ucsf.edu/tobacco/>; Xu, X., Bishop, E. E., Kennedy, S. M., Simpson, S. A., & Pechacek, T. F. (2015) Annual healthcare spending attributable to cigarette smoking: an update. American Journal of Preventive Medicine, 48(3), 326-333, copies of which are adopted by reference.

(Code 1986, § 465:00; Ord. No. 964, § 1, 11-18-2014; Ord. No. 1009, § 1, 1-21-2020)

Sec. 30-30. Exceptions and defenses.

Nothing in this article shall prevent the providing of licensed products to a person under the age of 21 as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this article for a person to have reasonably relied on proof of age as described by state law in Minn. Stat. § 340A.503, subd. 6.

(Code 1986, § 465:65; Ord. No. 964, § 1, 11-18-2014; Ord. No. 1009, § 1, 1-21-2020)

State law reference(s)—Proof of age as defense, Minn. Stat. §§ 340A.503, subd. 6, 461.12, subd. 6.

Sec. 30-31. Prohibited acts.

It shall be a violation of this article for any person to sell or offer to sell any licensed products:

- (1) To any person under the age of 21 years.
 - a. *Age verification.* Licensees must verify by means proof of age as described by state law in Minn. Stat. § 340A.503, subd. 6 that the purchaser is at least 21 years of age.
 - b. *Signage.* Notice of the legal sales age and age verification requirement must be posted prominently and in plain view at all times at each location where licensed products are offered for sale. The required signage must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.
- (2) By means of any type of vending machine.
- (3) By means of self-service methods whereby the customer does not need to make an oral or written request to an employee of the licensed premises in order to receive the licensed products and whereby there is not a physical exchange of the licensed products between the licensee or the licensee's employee and the customer, except as provided in subsection 30-33(b).
- (4) By means of loosies as defined in section 30-26.
- (5) 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. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other products subject to this division.
- (6) By means of delivery sales. All sales of licensed products must be conducted in person, in a licensed retail establishment, in over-the-counter sales transactions.
- (7) By any other means, to any other person, or in any other manner or form prohibited by federal, state, or other local law, ordinance, or other regulation.

(Code 1986, § 465:25; Ord. No. 916, 2-15-2011; Ord. No. 929, 2-21-2012; Ord. No. 964, § 1, 11-18-2014; Ord. No. 1009, § 1, 1-21-2020)

Sec. 30-32. Other prohibited acts.

Unless otherwise provided, the following acts shall be a violation of this article:

- (1) *Illegal sales.* It shall be a violation of this article for any person to sell or otherwise provide any licensed products to any person under the age of 21.
- (2) *Illegal possession.* It shall be a violation of this article for any person under the age of 18 to have in his/her possession any licensed products. This subsection shall not apply to minors lawfully involved in a compliance check.
- (3) *Illegal use.* It shall be a violation of this article for any person under the age of 18 to smoke, chew, sniff, or otherwise use any licensed products.
- (4) *Illegal procurement.* It shall be a violation of this article for any person under the age of 21 to purchase or attempt to purchase or otherwise obtain any licensed products, and it shall be a violation of this article for any person to purchase or otherwise obtain such item on behalf of a person under the age of 21. It shall further be a violation for any person to coerce or attempt to coerce a person under the age of 21 to illegally purchase or otherwise obtain or use any licensed products. This subsection shall not apply to persons lawfully involved in a compliance check.
- (5) *Use of false identification.* It shall be a violation of this article for any person under the age of 21 to attempt to disguise his/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.
- (6) *Liquid packaging—Child resistant.* It shall be a violation of this section for any licensee to sell any liquid, whether or not such liquid contains nicotine, that is intended for human consumption and use in a nicotine or lobelia delivery device, or electronic delivery device that is not in child resistant packaging as required by applicable federal or state law. Upon request by the city, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.
- (7) *Flavored products prohibited.* It shall be a violation of this article for any person to sell, offer for sale or otherwise distribute any flavored products.
- (8) *Coupon and price promotion prohibited.* It shall be a violation of this article for any person to 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.

(Code 1986, § 465:50; Ord. No. 929, 2-21-2012; Ord. No. 964, § 1, 11-18-2014; Ord. No. 1009, § 1, 1-21-2020)

State law reference(s)—Sale of tobacco to children, Minn. Stat. § 609.685.

Sec. 30-33. Self-service sales.

- (a) *Prohibited sales.* It shall be unlawful for a licensee under this article to allow the sale of licensed products by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the licensed products between the licensee or his/her clerk and the customer. All licensed products shall either be stored behind a counter or other area not freely accessible to customers or in a case or other storage unit not left open and accessible to the general public.

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- (b) *Exception.* This section shall not apply to tobacco products shops where the retailer ensures that no person younger than 21 years of age is present, or permitted to enter, at any time. This prohibition shall be clearly posted with a professional grade sign at the store entrance. The city may require a certified audit or other method or such other documentations as acceptable to the city to determine and verify that at least 70 percent of the revenue of the tobacco shop are derived from the sale licensed products for purposes of eligibility or continued eligibility of this exception.

(Code 1986, § 465:35; Ord. No. 916, 2-15-2011; Ord. No. 929, 2-21-2012; Ord. No. 964, § 1, 11-18-2014; Ord. No. 1009, § 1, 1-21-2020)

State law reference(s)—Self-service sales, Minn. Stat. § 461.18.

Sec. 30-34. Reserved.

Ord. No. 1009, § 1, adopted Jan. 21, 2020, repealed § 30-34, which pertained to tobacco products and vending machines and derived from Code 1986, § 465:30 and Ord. No. 964, § 1, adopted Nov. 18, 2014.

Secs. 30-35—30-60. Reserved.

DIVISION 2. DEALER'S LICENSE

Sec. 30-61. License required.

No person shall sell or offer to sell any licensed products without first having obtained a license to do so from the city.

(Code 1986, § 465:10; Ord. No. 929, 2-21-2012; Ord. No. 964, § 2, 11-18-2014; Ord. No. 1009, § 2, 1-21-2020)

State law reference(s)—Authority to require license, Minn. Stat. § 461.12, subd. 1.

Sec. 30-62. Application.

An application for a license to sell licensed products shall be made to the city clerk 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 names and addresses of all managers who will operate and/or manage the licensed location, the name and nature of the business for which the license is sought, the other information as required by the application form, and any additional information the city deems necessary. If the applicant is a corporation or any other type of business organization, the application shall also contain the names, addresses and respective percentage ownership interest of all of the owners of the corporation or business organization, provided however that if the number of owners exceeds ten persons only the ten owners having the largest percentage of ownership shall be listed. Upon receipt of a completed application, the city clerk shall forward the application to the chief of police for a background check on the applicant, which shall be completed and report made to the city clerk. Upon receipt of a report from the chief of police, the city clerk shall prepare and submit a report regarding the application to the city council for consideration at its next regularly scheduled meeting. If the city clerk shall determine that an application is incomplete, he/she shall return the application to the applicant with notice of the information necessary to make the application complete.

Every person applying for a license under this article shall certify on the annual license application that the person: (i) has implemented a training program for employees regarding laws related to the sale of licensed products, (ii) has trained all employees to comply with state and federal laws and/or regulations as well as this

article regarding the sale of licensed products within 30 days of the hire date of each employee, and (iii) has submitted to the city clerk a current list of employees containing each employees' name, hire date, and training date with respect to the date when a respective employee completed the training required by this paragraph.

The person applying for a license under this article shall attest to the accuracy of all information contained in the application.

(Code 1986, § 465:10(1); Ord. No. 916, 2-15-2011; Ord. No. 929, 2-21-2012; Ord. No. 964, § 2, 11-18-2014; Ord. No. 1009, § 2, 1-21-2020)

Sec. 30-63. Approval or denial.

The city council may either approve, approve with conditions, or deny the license or it may delay action for a reasonable period of time as necessary to complete any additional 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 the denial shall be given to the applicant along with notice of the applicant's right to appeal the council's decision to the district court.

The issuance of a license issued under this article 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.

(Code 1986, § 465:10(2); Ord. No. 916, 2-15-2011; Ord. No. 929, 2-21-2012; Ord. No. 1009, § 2, 1-21-2020)

Sec. 30-64. Basis for denial of license.

The following shall be grounds for denying the issuance or renewal of a license required under this division, provided that, except as may otherwise be required by law, the existence of any particular ground for denial does not mean that the city must deny the license:

- (1) The applicant is under the age of 21 years.
- (2) The applicant, or any owner, partner, officer or manager in the business organization seeking a tobacco license under this article, has been convicted within the past five years of any violation of a federal, state, or local law, ordinance, or other regulation relating to licensed products.
- (3) The applicant, or any owner, partner, officer or manager in the business organization seeking a tobacco license under this article, has had a license to sell licensed products revoked or suspended within the preceding 60 months of the date of application.
- (4) The applicant fails to provide any information required on the application or provides inaccurate, false or misleading information.
- (5) The applicant owner, partner, officer or manager is prohibited by federal, state, or other local law, ordinance, or other regulation from holding such a license.
- (6) No license shall be granted or renewed for operation on any premises on which taxes, assessments, service charges, or other financial claims of the city or of the state are delinquent. The city council may waive strict compliance with this subsection. No waiver may be granted, however, for taxes or any portion thereof which remain unpaid for a period exceeding one year after they become due, except, in the sole discretion of the city council under the circumstances presented, in instances of a lessee of leased property upon which taxes are delinquent.
- (7) The fee for the application has not been paid as required.

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- (8) The tobacco license to be issued under this article is for the same address or location that has previously been revoked or suspended within the preceding five years of the date of application. Notwithstanding any other provision of this article, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:
- a. the location has been transferred to new proprietor(s) in an arm's length transaction; and
 - b. the new proprietor(s) provide the city with clear and convincing evidence that the new proprietor(s) have acquired or are acquiring the location in an arm's length transaction.

For purposes of this clause (8):

1. "Arm's length transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this article is not an arm's length transaction.
2. "Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day operations of a business.

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. The city clerk shall provide written notice of revocation to the licensee and the decision of the city clerk shall be subject to hearing under the procedures contained in section 30-27. The license shall be revoked effective ten days following the date on the notice of revocation from the city clerk, except that such revocation shall be stayed pending a hearing before the hearing officer if the licensee makes a timely written request for hearing pursuant to section 30-27.

(Code 1986, § 465:20; Ord. No. 929, 2-21-2012; Ord. No. 964, § 2, 11-18-2014; Ord. No. 1009, § 2, 1-21-2020)

Sec. 30-65. Moveable place of business.

No license required under this division shall be issued to a moveable place of business. Only fixed-location businesses shall be eligible to be licensed under this division.

(Code 1986, § 465:10(6))

Sec. 30-66. Fees.

No license shall be issued under this division until the appropriate license fee shall be paid in full. The license fee shall be the amount duly established by resolution of the city council from time to time. The license fee shall not be prorated for licenses issued for less than a full year.

(Code 1986, § 465:15)

Sec. 30-67. Term.

All licenses issued under this division shall be valid until December 31 of the year of issue.

(Code 1986, § 465:10(3))

Sec. 30-68. Renewal.

The renewal of a license issued under this division shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but not more than 90 days before the expiration of the current license. The issuance of a license under this division 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.

(Code 1986, § 465:10(8); Ord. No. 964, § 2, 11-18-2014)

Sec. 30-69. Transferability.

Every license issued under this division 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.

(Code 1986, § 465:10(5); Ord. No. 929, 2-21-2012)

Sec. 30-70. Responsibility of licensee.

Every person issued a license under this division shall be responsible for the actions of his/her employees in regard to the sale of licensed products on 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 licensee's employee(s) to whatever penalties are appropriate under this article, state or federal law, or other applicable law or regulation.

(Code 1986, § 465:40; Ord. No. 916, 2-15-2011; Ord. No. 929, 2-21-2012; Ord. No. 964, § 2, 11-18-2014; Ord. No. 1009, § 2, 1-21-2020)

Sec. 30-71. Compliance checks and inspections.

- (a) All premises licensed under this division shall be open to inspection by the city police or other authorized city official during regular business hours.
- (b) From time to time, but at least once per year, the city shall conduct compliance checks. In accordance with state law, the city will conduct at least one compliance check that involves the participation of a person over 15 years and under 21 years (persons between 15 and 17 years of age must be engaged with the written consent of their parents or guardians) to enter the licensed premises to attempt to purchase licensed products. Persons used for the purpose of compliance checks shall be supervised by city-designated law enforcement officers or other designated city personnel. Persons used for compliance checks shall not be guilty of unlawful possession of licensed products when such items are obtained as a part of the compliance check. No persons used in compliance checks shall attempt to use a false identification misrepresenting the person's age, and all persons lawfully engaged in a compliance check shall answer all questions about the person's age asked by the licensee or his/her employee and shall produce any identification, if any exists, for which he/she is asked.
- (c) 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.

(Code 1986, § 465:45; Ord. No. 929, 2-21-2012; Ord. No. 964, § 2, 11-18-2014; Ord. No. 1009, § 2, 1-21-2020)

State law reference(s)—Compliance checks, Minn. Stat. § 461.12, subd. 5.

Sec. 30-72. Display.

All licenses issued under this division shall be posted and displayed in plain view of the general public on the licensed premises.

(Code 1986, § 465:10(7))

Sec. 30-73. Revocation, suspension or non-renewal.

Every license holder under this article 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 and procedures as provided in sections 30-27 and 30-28, for any of the following reasons:

- (1) Violation of any provision of this article.
- (2) Violation of section 50-89, drug paraphernalia.
- (3) Violation of any federal or state law or regulation pertaining to (a) trafficking in contraband tobacco products or illegal drugs, (b) the payment or collection of taxes on tobacco products, (c) the display of tobacco products or of health warnings pertaining to tobacco products, or (d) the sale of tobacco products.
- (4) One or more of the bases for denial of a license under section 30-64 existed at the time application was made or at any time before the license issued.
- (5) Other good cause related to the business of selling or furnishing licensed products.

(Code 1986, § 465:10(4); Ord. No. 964, § 2, 11-18-2014; Ord. No. 1009, § 2, 1-21-2020)

Editor's note(s)—Ord. No. 964, § 2, adopted Nov. 18, 2014 amended § 30-73 and in so doing changed the title of said section from "Revocation or suspension" to "Revocation, suspension or non-renewal," as set out herein.

Sec. 30-74. Smoking and sampling prohibited.

Pursuant to Minn. Stat. § 144.417, smoking or otherwise sampling of licensed products is prohibited within a retail establishment and shall not be permitted by the licensee and no person shall smoke or sample the same within the indoor area of any retail establishment with a retail tobacco license.

(Ord. No. 929, 2-21-2012; Ord. No. 964, § 2, 11-18-2014; Ord. No. 1009, § 2, 1-21-2020)

Editor's note(s)—Ord. No. 964, § 2, adopted Nov. 18, 2014 amended § 30-73 and in so doing changed the title of said section from "Smoking" to "Smoking and sampling prohibited," as set out herein.

Sec. 30-75. License conditions.

Each license issued under this article is subject to all of the following conditions:

- (1) The licensee must fully light the interior of the retail establishment during business hours.
- (2) The licensee must fully cooperate with representatives from the city when present at the retail establishment for city business purposes.
- (3) The licensee must maintain clean and clear front and rear entrances of the retail establishment.
- (4) The licensee may not supply matches to non-purchasing customers.

(5) The licensee must promptly remove any graffiti on the exterior of the retail establishment.
(Ord. No. 964, § 2, 11-18-2014)

Sec. 30-76. Other license conditions for tobacco products shops.

In addition to the license conditions required in section 30-75, each license issued under this article for a tobacco products shop is subject to all of the following conditions:

- (1) The licensee must post signs in visible locations that prohibit loitering inside or near the front entrance of the retail establishment.
- (2) The sales counter, store entrance, and interior of the retail establishment shall be visually recorded with a videotape or similar device at a quality level that allows the visual identification of patrons and employees. The recordings shall be maintained and made available to the police for 15 days before being reused, erased or otherwise deleted.
- (3) The licensee must post a sign at front entrance of the retail establishment that prohibits persons under the age of 21 from entering the retail establishment.
- (4) The front windows of the retail establishment must be clear, untinted, and unobstructed.
- (5) Each day of business, the licensee must inspect the parking lot and entrances of the retail establishment for litter and properly dispose of such litter.

(Ord. No. 964, § 2, 11-18-2014; Ord. No. 1009, § 2, 1-21-2020)

Sec. 30-77. Minimum clerk age.

Individuals employed by a licensed retail establishment under this division must be at least ~~18~~ 21 years of age to sell licensed products.

(Ord. No. 1009, § 2, 1-21-2020)

Secs. 30-78—30-100. Reserved.