CHAPTER 111: TOBACCO REGULATIONS

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GENERAL PROVISIONS

§ 111.01 PURPOSE.

Because the city recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess and use tobacco, tobacco products and tobacco related devices, and such sale, possession and use are violations of both state and federal laws; and because studies, which the city accepts and adopts, 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 chapter shall be intended to regulate the sale, possession and use of tobacco, tobacco products and tobacco related devices for the purpose of enforcing and furthering existing laws to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products and tobacco related devices and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke as stated in M.S. § 144.391, as it may be amended from time to time.
(Ord. 461, passed 7-24-97)

§ 111.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COMPLIANCE CHECKS. The system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products and tobacco related devices are following and complying with the requirements of this chapter. ***COMPLIANCE CHECKS*** shall involve the use of minors as authorized by this chapter. ***COMPLIANCE CHECKS*** shall also mean the use of minors who attempt to purchase tobacco, tobacco products and tobacco related devices 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 and tobacco related devices.

INDIVIDUALLY PACKAGED. 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.

LOOSIES. The common term used to refer to a single or individually packaged cigarette.

MINOR. Any natural person who has not yet reached the age of 18 years.

MOVEABLE PLACE OF BUSINESS. 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.

RETAIL ESTABLISHMENT. Any place of business where tobacco, tobacco products or tobacco related devices are available for sale to the general public. ***RETAIL ESTABLISHMENTS*** shall include, but not be limited to, grocery stores, convenience stores and restaurants.

SALE. Any transfer of goods for money, trade, barter or other consideration.

SELF-SERVICE MERCHANDISING. Open displays of tobacco, tobacco products or tobacco related devices in any manner where any person shall have access to the tobacco, tobacco products or tobacco related devices, 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 or tobacco related device between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

TOBACCO or *TOBACCO PRODUCTS.* 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 RELATED DEVICES. Any tobacco product as well as a pipe, rolling papers or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing or smoking of tobacco or tobacco products.

VENDING MACHINE. Any mechanical, electric or electronic or other type of device which dispenses tobacco, tobacco products or tobacco related devices upon the insertion of money, tokens or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product or tobacco related device.
(Ord. 461, passed 7-24-97)

§ 111.03 LICENSE.

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

(A) *Application.* An application for a license to sell tobacco, tobacco products or tobacco related devices 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 Clerk-Treasurer shall forward the application to the Council for action at its next regularly scheduled Council meeting. If the Clerk-Treasurer 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 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 Clerk-Treasurer 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.

(C) *Term*. All licenses issued under this chapter shall be valid for one calendar year from January 1.

(D) *Revocation or suspension*. Any licenses issued under this chapter may be revoked or suspended as provided in §§ 111.98 and 111.99.

(E) *Transfers*. All licenses issued under this chapter 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 chapter.

(G) *Display*. All licenses shall be posted and displayed in plain view of the general public on the licensed premises.

(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 at least 30 days but no more than 60 days before the expiration of the current license. The issuance of a license issued under this chapter 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.
(Ord. 461, passed 7-24-97)

§ 111.04 FEES.

No license shall be issued under this chapter until the appropriate license fee shall be paid in full. The fee for the license under this chapter shall be according to the annual official fee schedule.
(Ord. 461, passed 7-24-97)

§ 111.05 BASIS FOR DENIAL OF LICENSE.

(A) The following shall be grounds for denying the issuance or renewal of a license under this chapter; 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.

(B) 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:

(1) The applicant is under the age of 18 years;

(2) The applicant has been convicted within 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 or tobacco related devices;

(3) The applicant has had a license to sell tobacco, tobacco products or tobacco related devices revoked within the preceding 12 months of the date of application;

(4) The applicant fails to provide any information required on the application or provides false or misleading information;

(5) The applicant is prohibited by federal, state or other local law, ordinance or other regulation from holding such a license.
(Ord. 461, passed 7-24-97)

§ 111.06 EXCEPTIONS AND DEFENSES.

Nothing in this chapter shall prevent the providing of tobacco, tobacco products or tobacco related devices to a minor as part of a lawfully recognized religious, spiritual or cultural ceremony. It shall be an affirmative defense to the violation of this chapter for a person to have reasonably relied on proof of age as described by state law.
(Ord. 461, passed 7-24-97)

REGULATIONS

§ 111.20 PROHIBITED SALES.

It shall be a violation of this chapter for any person to sell or offer to sell any tobacco, tobacco product or tobacco related device:

(A) To any person under the age of 18 years;

(B) By means of any type of vending machine, except as may otherwise be provided in this chapter;

(C) By means of self-service methods 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 tobacco, tobacco product or tobacco related device and whereby there is not a physical exchange of the tobacco, tobacco product or tobacco related device between the licensee or the licensee's employee and the customer;

(D) By means of loosies as defined in § 111.02;

(E) 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;

(F) By any other means, to any other person on in any other manner or form prohibited by federal, state or other local law, ordinance provision or other regulation.
(Ord. 461, passed 7-24-97) Penalty, see § 111.99

§ 111.21 VENDING MACHINES.

It shall be unlawful for any person licensed under this chapter to allow the sale of tobacco, tobacco products or tobacco related devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.
(Ord. 461, passed 7-24-97) Penalty, see § 111.99

§ 111.22 SELF-SERVICE SALES.

It shall be unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products or tobacco related devices 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 tobacco, tobacco products or tobacco related devices between the licensee or his or her clerk and the customer. All tobacco, tobacco products and tobacco related devices 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. Any retailer selling tobacco, tobacco products or tobacco related devices at the time this chapter is adopted shall comply with this section within 30 days following the effective date of this chapter.
(Ord. 461, passed 7-24-97) Penalty, see § 111.99

§ 111.23 RESPONSIBILITY.

All licensees under this chapter shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products or tobacco related devices on the licensed premises, and the sale

of such an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the city from also subjecting the clerk to whatever penalties are appropriate under this chapter, state or federal law or other applicable law or regulation.
(Ord. 461, passed 7-24-97)

§ 111.24 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 15 years but less than 18 years, to enter the licensed premises to attempt to purchase tobacco, tobacco products or tobacco related devices. Minors used for the purpose of compliance checks shall be supervised by city designated law enforcement officers or other designated city personnel. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products or tobacco related devices when such items are obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor'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.
(Ord. 461, passed 7-24-97)

§ 111.25 ADDITIONAL ILLEGAL ACTS.

Unless otherwise provided, the following acts shall be a violation of this chapter.

(A) *Illegal sales*. It shall be a violation of this chapter for any person to sell or otherwise provide any tobacco, tobacco product or tobacco related device to any minor.

(B) *Illegal possession*. It shall be a violation of this chapter for any minor to have in his or her possession any tobacco, tobacco product or tobacco related device. This division shall not apply to minors lawfully involved in a compliance check.

(C) *Illegal use*. It shall be a violation of this chapter for any minor to smoke, chew, sniff or otherwise use any tobacco, tobacco product or tobacco related device.

(D) *Illegal procurement*. It shall be a violation of this chapter for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product or tobacco related device, and it shall be

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

(E) *Use of false identification.* It shall be a violation of this chapter for any minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.
(Ord. 461, passed 7-24-97) Penalty, see § 111.99

§ 111.98 VIOLATIONS.

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

(B) *Hearings.* If a person accused of violating this chapter so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

(C) *Hearing officer.* The City Council shall serve as the hearing officer.

(D) *Decision.* If the hearing officer (the City Council) determines that a violation of this chapter did occur, that decision, along with the hearing officers reasons for finding a violation and the penalty to be imposed under § 111.99, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted violator.

(E) *Appeals.* Appeals of any decision made by the hearing officer (the City Council) shall be filed in the District Court for the city in which the alleged violation occurred.

(F) *Misdemeanor prosecution.* Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this chapter. If the city elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.

(G) *Continued violation.* Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.
(Ord. 461, passed 7-24-97)

§ 111.99 PENALTY.

(A) *Licensees and employees*. Any licensee, and any employee of a licensee, found to have violated this chapter shall be charged an administrative fine of $75 for a first violation of this chapter; $200 for a second offense at the same licensed premises within a 24-month period; and $250 for a third or subsequent offense at the same location within a 24-month period. In addition, after the third offense, the license shall be suspended for not less than seven days.

(B) *Other individuals*. Other individuals, other than minors regulated by division (C) of this section, found to be in violation of this chapter shall be charged an administrative fee of $50.

(C) *Minors*. Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase tobacco, tobacco products or tobacco related devices shall be required to perform community service as determined by the hearing officer.

(D) *Misdemeanor*. Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this chapter.
(Ord. 461, passed 7-24-97)