

## ORDINANCE

By Gordon and Bender

### 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 Section 281.10 of the above-entitled ordinance be amended to read as follows:

**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, tobacco products, or tobacco-related devices~~ at any place in the city without being licensed under this chapter. The sale of tobacco 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.

Section 2. That Section 281.15 of the above-entitled ordinance be amended to read as follows:

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

*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 Minn. Statute Section 297F.01.

~~*Component part* means any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.~~

~~*Constituent* means any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacture or packing of the tobacco product. Such term shall include a smoke constituent.~~

*Electronic delivery device* means any product containing or delivering nicotine, lobelia, or any other substance 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 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 tobacco product* means any tobacco product or component part thereof that contains a constituent that imparts a characterizing flavor, unless it imparts only the taste or aroma of menthol, mint or wintergreen. As used in this definition, the term "characterizing flavor" means a distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted 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, any dessert, any alcoholic beverage, any fruit, any herb, or and any spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. A public statement or claim made or disseminated by the manufacturer of a tobacco 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 characterizing flavor shall establish taste or aroma other than tobacco may be one of the methods used to determine that the tobacco 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.

*Self service merchandising* means open displays of ~~tobacco, tobacco products, or tobacco related devices~~ in any manner where any person shall have access to the tobacco, ~~or tobacco related devices, 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 tobacco products or tobacco related device between the customer and the licensee or employee.

Nicotine or lobelia delivery product means 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. Nicotine or lobelia delivery product does 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 or for other medical purposes, and is being marketed and sold solely for that approved purpose.

*Self service method* means a method of sales of tobacco ~~or tobacco related devices~~ products whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the tobacco, ~~or tobacco related device, product~~ and no physical exchange of the tobacco ~~or tobacco related device~~ 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 tobacco product; 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. 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* means tobacco ~~as defined in this section and any,~~ tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products as those terms are defined in Minn. Statute Section 609.685 this section.

*Tobacco products shop* means a retail establishment with an entrance door opening directly to the outside that derives at least ninety (90) percent of its gross revenue from the sale of tobacco 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 ~~any tobacco product as well as~~ 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 tobacco products.

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

Section 3. That Section 281.20 of the above-entitled ordinance be amended to read as follows:

**281.20. Application for license; referral and action.** Any person desiring to obtain a tobacco dealers license shall file with the licensing official a written application to the city council 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 tobacco from a motor vehicle. ~~Upon the filing of any such application it shall be presented to the city council for consideration, and upon the granting of any such license by the council, the licensing official shall issue such license to the applicant after payment of the license fee herein required.~~

Section 4. That Section 281.45 of the above-entitled ordinance be amended to read as follows:

**281.45. Restrictions on sales of tobacco products.** (a) No person shall sell cigarettes in any manner other than by the package or multiples thereof to which a stamp has been affixed in accordance with Minnesota Statutes ~~[Section] 297.03, subd. 1~~ Section 297F.08, subd. 1.

(b) Self-service methods of sales and self service methods of merchandising tobacco, tobacco products or tobacco related products as defined in section 281.15 of this Code, shall be prohibited.

(c) Every person applying for a license to sell tobacco 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 tobacco products and has trained all employees to comply with state and federal laws and/or regulations regarding the sale of tobacco 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 eighteen (18) 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 younger than eighteen (18) years 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. The city may maintain a

list of flavored tobacco products and tobacco products determined to not constitute flavored tobacco products and may require a license holder to provide documentation or evidence establishing that a particular tobacco product offered for sale by that license holder is not a flavored tobacco product. Failure to provide sufficient information may be one 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. This subsection shall become effective January 1, 2016.

(g) No person shall 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 shall 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. ~~This subsection shall become effective January 1, 2016.~~

Section 5. That Section 281.55 of the above-entitled ordinance be amended to read as follows:

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

Section 6. That Section 281.56 of the above-entitled ordinance be amended to read as follows:

**281.56. 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 Section 281.10 of the Minneapolis Code of Ordinances is hereby prohibited from any of the following:

(a) Except for a bona fide sale of a smoking device, providing or otherwise making available for use by a customer, potential customer, or any other person a smoking device for the purpose of sampling any tobacco product, provided that this subsection shall not prevent providing or otherwise making available for sampling, testing, or instructional purposes, an electronic delivery device as defined in Minn. Statute Section 609.685;

(b) Providing in exchange for a fee or any other consideration seating within or access to the indoor area of a tobacco products shop; or

(c) Permitting within the indoor area of a tobacco products shop the sampling of any tobacco product which was not furnished by the tobacco products shop on the date and at the time the sampling occurs.

A tobacco products shop may distribute single service samples of smokeless tobacco products or cigarettes, cigars, pipe tobacco, or other tobacco products suitable for smoking subject to the limitations on indoor sampling or smoking provided in this section.

Section 7. That Section 281.60 of the above-entitled ordinance be amended to read as follows:

**281.60. Revocation, suspension or non-renewal.** 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 281.65, for any of the following reasons:

- (a) Violation of section 281.50 or any other provision of this chapter.
- (b) Violation of Minnesota Statutes, Section 609.685 relating to sale of tobacco to persons under eighteen (18) years of age.
- (c) Failure of the license holder to monitor, supervise, and control the purchase of tobacco products from a vending machine so as to prevent the purchase of tobacco products from a vending machine by persons under eighteen (18) years of age.
- (d) Other good cause related to the business of selling or furnishing tobacco products.

Section 8. That Section 281.70 of the above-entitled ordinance be amended to read as follows:

**281.70. Administrative penalty, individual.** An individual who sells tobacco products to a person under the age of eighteen (18) years must be charged an administrative penalty of fifty dollars (\$50.00). The licensee will be responsible for ensuring the employee pays the fine or takes necessary steps to appeal the penalty.

Section 9. That Section 281.80 of the above-entitled ordinance be amended to read as follows:

**281.80. Enforcement.** Sections 281.30 through 281.65 shall be administered and enforced by and through the licensing official of the City of Minneapolis. All compliance operations to ensure adherence to sections 281.60(b) and 281.60(c) shall be conducted by the licensing official or the Minneapolis Police Department.

The licensing official or the Minneapolis Police Department will conduct unannounced compliance checks at least once each calendar year at each location where tobacco ~~is~~ products are sold to test compliance with Minnesota Statutes, Sections ~~609.685 and 609.6855~~. In the event of a first violation, an unannounced compliance check shall be done within the following six (6) months and at least twice within the anniversary date of the first violation. In the event of a second violation, an unannounced compliance check shall be done within the following four (4) months and at least three (3) times within the anniversary date of the second violation. Compliance checks must involve minors over the age of fifteen (15), but younger than the age eighteen (18), who with the prior written consent of a parent or guardian, attempt to purchase tobacco products under the direct supervision of a law enforcement officer or employee of the licensing authority.

Section 10. That Section 281.90 of the above-entitled ordinance be amended to read as follows:

**281.90. Criminal penalties.** In addition to any civil penalties imposed under this chapter, nothing contained in this chapter shall prohibit the City ~~of~~ of Minneapolis from seeking criminal prosecution for violations of Minnesota Statutes, Sections ~~609.665~~ 609.685 or 609.6855, as provided therein.