

CHAPTER 113: TOBACCO REGULATIONS

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Cross-reference:

Fees, Charges, and Rates, see Ch. 34

Criminal History License Background Investigations, see § 33.20

§ 113.01 LICENSE REQUIRED.

No person, firm, or corporation, except a common carrier licensed by the state under Laws of 1941, Chapter 405, shall directly or indirectly or by means of any device keep for retail sale, sell at retail, or otherwise dispose of any cigarette or cigarette wrapper at any place in this municipality unless license therefor shall first have been obtained as provided in this chapter.

(Ord. passed 11-20-97) Penalty, see § 113.99

§ 113.02 DEFINITIONS AND INTERPRETATIONS.

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

- (1) The singular shall include the plural and the plural shall include the singular.
- (2) The masculine shall include the feminine and neuter, and vice-versa.
- (3) Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions.

(B) 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** also mean the use of minors who attempt to purchase tobacco, tobacco products, or 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 PACKAGED** 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 division shall not be considered **INDIVIDUALLY PACKAGED**.

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

MAY. The act referred to is permissive.

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 storefront 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 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.

SHALL. The act referred to is mandatory.

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 a 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 MACHINES. 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. passed 11-20-97)

§ 113.03 LICENSE; APPLICATION AND TERMS.

(A) 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 Manager-Clerk shall forward the application to the Council for action at its next regularly scheduled Council meeting. If the City Manager-Clerk 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) (1) *Action.* The Council may either approve or deny the license, or it may delay action for a 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 Manager-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.

(2) *Term.* All licenses issued under this chapter shall be valid from January 1 to December 31 for the year applied.

(3) *Revocation or suspension.* Any license issued under this chapter may be revoked or suspended as provided in § 113.99.

(4) *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.

(5) *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.

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

(Ord. passed 11-20-97)

§ 113.04 FEES.

No license shall be issued under this chapter until the appropriate license fee has been paid in full. The fee for a license issued under this chapter shall be as designated provided there have been no violations of this chapter. If an applicant has had one violation of any portion of this chapter of the municipal code, including § 113.10, within the previous license period, the fee for the license application shall be set by resolution by the Council from time to time.

(Ord. passed 11-20-97; Am. Ord. 319, passed 8-17-00)

§ 113.05 BASIS FOR DENIAL OF LICENSE.

(A) 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.

(B) 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 this chapter or other 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 18 years.

(2) The applicant has been convicted within the past three 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 this type of license.

(6) If the applicant has had more than one violation of § 113.10 within the previous license period, the city shall deny the license application for a period of one year.

(Ord. passed 11-20-97; Am. Ord. 319, passed 8-17-00)

§ 113.06 PROHIBITED SALES.

(A) 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 without a license.

(B) No license shall be issued to any person at any place other than his or her established place of business.

(C) No license shall be issued for the sale of cigarettes from a moveable place of business.

(D) No person shall or company shall sell at retail, keep for retail sale, or otherwise deal in cigarettes:

(1) Within 100 feet of any school building;

(2) To any person under the age of 21 years;

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

(4) 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 premise 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;

(5) By means of loosies as defined in § 113.02 of this code;

(6) Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process; or

(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 provision, or other regulation.

(Ord. passed 11-20-97; Am. Ord. 455, passed 1-16-20) Penalty, see § 113.99

§ 113.07 VENDING MACHINES RESTRICTED.

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. passed 11-20-97) Penalty, see § 113.99

§ 113.08 SELF-SERVICE SALES PROHIBITED.

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 where by the customer may have access to these 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 product, or tobacco related device 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 180 days.

(Ord. passed 11-20-97) Penalty, see § 113.99

§ 113.09 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 any of these items 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. passed 11-20-97) Penalty, see § 113.99

§ 113.10 COMPLIANCE CHECKS AND INSPECTIONS.

(A) All licensed premises shall be open to inspection by the city police or other authorized city official during regular business hours.

(B) (1) 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 premise to attempt to purchase tobacco, tobacco products, or tobacco related devices. Minors used for the purpose of compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, or tobacco related devices when these items are obtained as a part of the compliance check.

(2) 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.

(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.

(Ord. passed 11-20-97)

§ 113.11 OTHER 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 these 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. passed 11-20-97) Penalty, see § 113.99

§ 113.12 VIOLATIONS; PROCEDURE.

(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 Chief of Police or his or her designee shall serve as the hearing officer.

(D) *Decision.* If the hearing officer determines that a violation of this chapter did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under § 113.99 of this code, 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, these findings shall be recorded and a copy provided to the acquitted accused violator.

(E) *Appeals.* Appeals of any decision made by the hearing officer 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. passed 11-20-97) Penalty, see § 113.99

§ 113.13 EXCEPTIONS AND DEFENSES.

(A) 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.

(B) 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. passed 11-20-97)

§ 113.99 PENALTY.

(A) *Licensees and employees.*

(1) 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.

(2) In addition to the assessments and suspensions provided for in division (A)(1), if the licensee fails more than one compliance check, as defined in § 113.10, within a license period, that applicant shall immediately surrender the license to sell tobacco, and the license shall be suspended for the remainder of the license period.

(B) *Minors.* Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase tobacco, tobacco products, or tobacco related devices, shall be subject to the notification of their parents, and appropriate school authorities, and shall be required to attend and complete a tobacco free education program approved by their local school district, perform 20 hours of community service, or participate in and successfully complete an appropriate diversion program approved by the county Probation Department.

(C) *Misdemeanor.* Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this chapter as set forth in § 10.99.

(Ord. passed 11-20-97; Am. Ord. 319, passed 8-17-00; Am. Ord. 326, passed 2-22-01)