

TOBACCO RELATED PRODUCTS

Section 23-101. LICENSE REQUIRED. No person shall directly or indirectly or by means of any device keep for retail sale, sell at retail, or otherwise dispense any covered product at any place in the city of Brooklyn Center unless a license therefor shall first have been obtained as provided in Sections 23-101 through 23-108.

Section 23-102. DEFINITIONS. Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of Sections 23-101 through 23-108, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

1. “*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, that is not a cigarette as defined in Minnesota Statutes, Section 297F.01, Subdivision 3, as amended from time to time.
2. “*Compliance checks*” means the system the City uses to investigate and ensure that those authorized to sell covered products are following and complying with the requirements of Sections 23-101 through 23-108. Compliance checks shall involve the use of persons under the age of 21 as authorized by Sections 23-101 through 23-108. Compliance checks shall also mean the use of persons under the age of 21 who attempt to purchase covered products for educational, research and training purposes as authorized by state and federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate federal, state or local laws and regulations relating to covered products.
3. “*Covered products*” means any tobacco, tobacco-related device, electronic delivery device, e-liquid, or nicotine or lobelia delivery product as those terms are defined in this section.
4. “*Electronic delivery device*” shall mean an electronic product that is designed to use, or that uses, e-liquid to simulate smoking in the delivery of nicotine or any other substance through inhalation of the aerosol or vapor produced from the substance. Electronic delivery devices shall include any component part of such a product whether or not sold separately. Electronic delivery devices shall not include any product that has been approved or otherwise certified by the United States Food and Drug Administration for legal sales for use in tobacco cessation treatment or other medical purposes, and is being marketed and sold solely for that approved purpose.
5. “*E-liquid*” means any liquid intended for human consumption through an electronic delivery device used to simulate smoking in the delivery of nicotine, lobelia, or a product containing the taste or smell related to chocolate, cocoa,

mint, menthol, wintergreen, vanilla, honey, fruit, or any candy, dessert, alcoholic beverages, herb, or spice through inhalation of the aerosol or vapor produced from the liquid. E-liquid shall not include any product that has been approved or otherwise certified by the United States Food and Drug Administration for legal sales of use in tobacco cessation treatment or other medical purposes. And is being marketed and sold solely for that approved purpose.

6. *“Individually packaged”* means 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 cigars, 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.
7. *“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.
8. *“Loosies”* means the common term used to refer to a single or individually-packaged cigarette or any other tobacco product that has been removed from its packaging and sold individually. The term loosies does not include an individual premium cigar, as defined in Minnesota Statutes, Section licensed retailer as a single cigar to the extent permitted by all applicable state and federal laws.
9. *“Moveable place of business”* means any form of business operated out of a truck, van, automobile or other type of vehicle or transportable shelter and not fixed-address storefront or other permanent type of structure authorized for sales transactions.
10. *“Nicotine or lobelia delivery product”* means any product containing or delivering nicotine, including any synthetic variation thereof, 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 of for other medical purposes, and is being marketed and sold solely for that approved purpose.

11. *“Retail establishment”* means any place of business where covered products are available for sale to the general public. The term shall include, but is not limited to, grocery stores, convenience stores, restaurants, and drug stores.
12. *“Sale”* means any transfer of goods for money, trade, barter or other consideration.
13. *“Self-service merchandising”* means open displays of covered products in any manner where any person shall have access to the covered 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 covered products between the customer and the licensee or employee. Self-service sales are interpreted as being any sale where there is not an actual physical exchange of the covered product between the clerk and the customer.
14. *“Smoking”* shall mean the inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or tobacco product, or inhaling or exhaling vapor from any electronic delivery device. Smoking shall include carrying a lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation.
15. *“Tobacco or tobacco products”* means and includes 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.
16. *“Tobacco-related devices”* means and includes any tobacco product as well as a pipe, rolling papers, or other device intentionally designed or intended to be used in a manner that enables the chewing, sniffing or smoking of tobacco or tobacco products including electronic delivery devices. Tobacco-related

devices include components of tobacco-related devices which may be marketed or sold separately.

17. “*Vending machine*” means any mechanical, electric or electronic, or other type of device that 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 covered product.

Section 23-103. LICENSE REQUIRED.

1. *Generally.* No person may directly or indirectly or by means of any device keep for retail sale, sell at retail, offer to sell or otherwise dispose of any covered product at any place in the city unless a license has first been issued by the City as provided in this Section.
2. *Application.* An application for a license to sell covered products shall be made on a form provided by the City. The application shall contain the full name of the applicant, the applicant's residential and business addresses, and telephone numbers, the name of the business for which the license is sought, and any additional information the City deems necessary.
3. *Action.* Upon receipt of a completed application, the City Clerk shall forward the application to the police department for investigation. The police department shall conduct an investigation of the applicant and application regarding the fitness of the applicant to hold a license pursuant to the standards set forth in Sections 23-101 through 23-108, and report the results of its investigation to the City Clerk within 30 days of receipt of the application. The City Clerk shall forward the application for consideration by the City Council.
4. *Fees.* No application for a license under Sections 23-101 through 23-108 shall be accepted until the appropriate license or investigation fee is paid in full. The fee(s) shall be established by the City Council by resolution from time to time.
5. *Sanctions for violation.* Sanctions for violating a provision of Section 23-101 through 23-108 shall be set by the City Council at the penalty phase and shall not be less than state mandated guidelines.
6. *Transfers.* All licenses issued under Sections 23-101 through 23-108 shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued.
7. *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 Sections 23-101 through 23-108.

8. *Display.* All licenses shall be posted and displayed in plain view of the general public on the licensed premises.
9. *Term and Renewals.* Every such license shall expire on December 31 next after its issuance. A fee for the renewal of any license issued under Sections 23-101 through 23-108 shall be paid to the City Clerk with the renewal application. Applications for renewal must be submitted by November 30 of the year prior to the license year.
10. *Issuance is a privilege and not a right.* The issuance of a license is a privilege and does not entitle the holder to an automatic renewal of the license.
11. *Maximum number of licenses.* The maximum number of licenses issued by the City in any year is limited to 15, except that any licensee holding a valid license as of October 1, 2018 is permitted to retain and renew said license. If the maximum number of licenses has already been issued, a licensee that allows its license to expire or has its license revoked shall not be eligible for a new license. Persons desiring to apply for a license may be placed on a waiting list and be eligible to apply on a first-come, first-serve basis once the number of issued licenses falls below the maximum number allowed. Notwithstanding the maximum number of allowed licenses, an applicant who purchases a business location holding a current license shall be allowed to apply for and obtain, if eligible, a new license for the business location provided it is obtained within the same license year as the current license.
12. *Instructional Program.* All licensees shall ensure that all employees engaged with customers at the point of sale go through a training program on the legal requirements relating to the sale of covered products and the possible consequences for violations. Any training program must be pre-approved by the City. Licensees must maintain and provide to the City documentation demonstrating compliance at the time of renewal, or whenever requested during the license term.

Section 23-104. RESTRICTIONS.

1. The following shall be grounds for denying the issuance of or renewal of a license under Sections 23-101 through 23-108.
 - a. 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 covered products, or has had a license to sell covered products revoked or suspended within the past five years.

- b. The applicant fails to provide any information required on the application, or provides false or misleading information.
2. No license may be issued or renewed:
 - a. To any applicant who is under 21 years of age.
 - b. To any applicant who is prohibited by federal, state, or other local law, ordinance, or regulation from holding such a license.
 - c. To any applicant who has fees or charges to the City or the County that are due and unpaid.
 - d. For any premises for which property taxes or City utility charges are due and unpaid.

Section 23-105. PROHIBITED SALES.

1. It shall be a violation of Sections 23-101 through 23-108 for any person to sell or offer to sell any covered product:
 - a. By a vending machine;
 - b. By self-service displays;
 - c. By means of loosies;
 - d. Containing opium, morphine, jimsonweed, belladonna, 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; or
 - e. To any other person, in any other manner or form prohibited by federal or state law or regulation, or by local ordinance.
2. No person shall sell any covered product to any person under the age of 21.
 - a. Age verification. Licensees must verify by means of government-issued photographic identification that the purchaser of the covered product is at least 21 years of age. That the person appeared to be old

enough to lawfully purchase a covered product does not constitute a defense to a violation of this Section.

- b. Signage. Notice of the legal sales age and age verification requirement must be posted at each location where covered products are offered for sale. The required signage, which will be provided to the licensee by the City, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase of covered products.
3. No person shall sell or offer for sale any electronic delivery device or e-liquid to any person unless the sale is on the premises of a retail establishment that:
 - a. Prohibits persons under the age of 21 from entering at all times; and
 - b. Derives at least 90 percent of its revenues from the sale of covered products. Any retail establishment that sells electronic delivery devices or e-liquids must provide to the City upon request financial records that document annual sales.
 4. It shall be a violation of Sections 23-101 through 23-108 for any retail establishment to sell, offer for sale, or distribute a single cigar unless the cigar is sold in an original package of at least five cigars, provided that:
 - a. This restriction shall not apply to any sale, offer to sell, or distribution of a single cigar that has a retail sales price of no less than \$2.10 before sales tax.
 - b. Cigars to which price promotions or discounts apply shall not be excluded from this restriction.

Section 23-106. SMOKING PROHIBITED. Smoking shall not be permitted in, and no person shall smoke in, any licensed premises. Smoking in any licensed premises for the purpose of sampling a covered product is prohibited under this Section.

Section 23-107. 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 twice per year, the City shall conduct compliance checks by engaging with the written person over the age of 15 years but less than 21 years to enter the licensed premise to attempt to purchase covered products. Persons under the age of 21 used for the purpose of compliance checks shall be supervised by City designated law enforcement officers or other designated City personnel. No person used in compliance checks shall attempt to use a false identification misrepresenting the person'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 the person is asked.

Section 23-108. VIOLATION AND PENALTY.

1. *Licensees responsible.* All licensees are responsible for the actions of their employees in regard to the sale of covered products on the licensed premises and the sale of a covered product by an employee shall be considered a sale by the licensee for the purposes of constituting a license violation under this Section.
2. *Misdemeanor prosecution.* Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of Sections 23-101 through 23-108.
3. *Administrative penalties.*
 - a) *Licensees.* If a licensee or employee of a licensee sells covered products to a person under the age of 21 years, or violates any other provision of Sections 23-101 through 23-108, the licensee shall be charged an administrative penalty of \$200. An administrative penalty of \$500 shall be imposed for a second violation at the same location within 24 months after the initial violation. For a third or subsequent violation at the same location within 24 months after the initial violation, an administrative penalty of \$750 shall be imposed, and the licensee's authority to sell tobacco at that location shall be suspended for not less than 30 days. Upon a fourth violation, the license will be revoked.
 - b) *Other individuals.* Other individuals, found to be in violation of Sections 23-101 through 23-108 shall be charged an administrative fine of \$50.00.
 - c) *Statutory penalties.* If the administrative penalties authorized to be imposed by Minnesota Statutes, Section 461.12, as it may be amended from time to time, differ from those established in this Section, then the more severe penalty shall prevail.
4. *License revocation, suspension, or non-renewal.* In addition to misdemeanor prosecution and administrative penalties, violation of Section 23-101 through 23-108 is grounds for revocation or suspension under Section 23-006 or non-renewal under Section 23-104.