

802. TOBACCO PRODUCTS

802.005 PURPOSE AND INTENT

Because the City of Little Canada recognizes that tobacco use has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this ordinance is intended to regulate the sale of tobacco, tobacco-related devices, and electronic delivery devices for the purpose of enforcing and furthering existing laws, and to protect youth and young adults against the serious effects associated with use and initiation. Youth and young people are particularly susceptible to the addictive properties of tobacco products, and are particularly likely to become lifelong users. National data show that about 95 percent of adult smokers begin smoking before they turn 21. The ages of 18 to 21 are a critical period when many smokers move from experimental smoking to regular, daily use. Electronic delivery device use among youth has recently tripled. Young minds are particularly susceptible to the addictive properties of nicotine. As a result, approximately 3 out of 4 teen smokers end up smoking into adulthood.

This ordinance is intended to regulate the sale of tobacco, tobacco-related devices, and electronic delivery devices to protect the public, especially youth and young adults, 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.

802.010. DEFINITIONS. For purposes of this regulation, the following terms shall mean:

- (a) "General Sales and Display" means a section of any business establishment not meeting the definition of Tobacco Store in paragraph (e) of this section, which displays for sale Licensed Products as an accessory use to the establishment's primary business purpose. The sale of such Licensed Products shall be merely incidental to the establishment's primary business purpose. The section displaying Licensed Products shall comprise an area no greater than fifty (50) cubic feet and must be located within the immediate vicinity of the establishment's primary point of sale. There can be no entrance door from the outside opening directly to the section of store displaying Licensed Products. A separate point of sale for Licensed Product sales shall be prohibited.
- (b) "Tobacco Product" means 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 including but not limited to cigarettes; cigars; cheroots; stogies; perique; granulated, plug-cut, crimp-cut, ready rubbed and other smoking tobacco; snuff; snuff flowers; 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, prepared in

such a manner as to be suitable for chewing or smoking in a pipe, or other tobacco related devices. Tobacco Product does not include any product that has been approved by the U.S. 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.

- (c) "Self-Service Merchandising" means a method of displaying Licensed Products, in a manner in which such Licensed Products are accessible to the public without the intervention of any employee.
- (d) "Vending Machine" means any mechanical, electric or electronic device, appliance or any other medium or object designed or used for vending purposes which, upon insertion of money, tokens or any other form of payment, dispenses Licensed Products.
- (e) "Tobacco Store" means a retail establishment with an entrance door opening directly to the outside that derives more than 90 percent of its gross revenue from the sale of Licensed Products in which the sale of other products is merely incidental. This definition does not include an accessory tobacco section of any business establishment meeting the definition of General Sales and Display in paragraph (a) of this section.
- (f) "Tobacco-Related Device" means any pipe, rolling papers, ashtray, or other device intentionally designed or intended to be used with Tobacco Products. Tobacco-Related Devices include components of tobacco-related devices or tobacco products, which may be marketed or sold separately. Tobacco-Related Devices may or may not contain tobacco.
- (g) "Compliance Checks" are 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 ordinance. Compliance checks shall involve the use of persons under the age of 21 as authorized by this ordinance. Compliance checks shall also mean the use of persons under the age of 21 who attempt to purchase Licensed 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 Licensed Products..
- (h) "Individually Packaged" means the practice of selling any Licensed Products wrapped individually for sale. Individually wrapped Licensed Products shall include but not be limited to single cigarette packs, single bags or cans of loose tobacco in any form, single cans or other packaging of snuff or chewing tobacco, e-cigarettes, and vapor inhalers. Cartons or other packaging containing more than a single pack or

other container as described in this definition shall not be considered individually packaged.

- (i) “Electronic Delivery Devices” mean any product containing or delivering nicotine or lobelia any other substance, whether natural or synthetic, intended for human consumption that can be used to deliver nicotine, lobelia or any other substance through inhalation of vapor or any other product or byproduct by any means, or any component part of such a product, that is not a Tobacco Product as defined in this section. Electronic Delivery Devices include, but are not limited to: e-cigarettes, e-cigars, personal vaporizers, e-pipes, vape pens, mods, tank systems, or any other product where it delivers a substance into the human body through the inhalation of vapor or any other product or byproduct. Electronic Delivery Devices do not include any product that has been approved or otherwise certified for legal sale by the U.S. Food and Drug Administration as a tobacco-cessation product, a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.
- (j) “Smoking” means inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco, plant, natural or synthetic product. Smoking includes carrying or using an activated Electronic Delivery Device. Smoking also includes carrying a lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation.
- (k) “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. A standard window screen (0.011 gauge with an 18 by 16 mesh count) is not considered a wall.
- (l) “Licensed Products” mean the term that collectively refers to any tobacco product, tobacco-related device, or electronic delivery device.

802.020. LICENSE REQUIRED. No person shall, directly or indirectly, keep for retail sale, sell at retail, keep for wholesale, sell at wholesale or otherwise dispose of Licensed Products unless licensed by the City of Little Canada. A Tobacco Store license is available to a premises meeting the definition in Chapter 802.010 (e); a General Sales and Display license is available to a premises meeting the definition in Chapter 802.010 (a). License applications shall be submitted to the City Administrator, as required under Chapter 802.030, together with the applicable license fee as determined from time to time by City Council resolution. A license may be issued only for the specific premises and individual identified in the application.

802.025. RESTRICTIONS ON NUMBER OF LICENSES. The number of Tobacco Store Licenses within the City shall not exceed two (2). There is no limit on the number of General Sales and Display Licenses.

802.030. APPLICATION.

- (a) Any person desiring a license to engage in the business of dealing and/or selling Licensed Products shall first make application therefor to the Council of the City by filing with the City Administrator for presentation to the Council an application in writing, which application shall set forth the name and place of residence of the applicant and the exact location of the place at which the applicant proposes to carry on said business. An application to renew a Tobacco Store license shall include a certified statement by the business owner that the store is in compliance with: (1) the requirement that more than 90% of gross revenue is derived from the sale of Licensed Products and (2) the building criteria set forth in 802.010 (a). Such certification shall include the following: total gross revenues, total gross revenues derived from the sale of approved products, and total gross revenues derived from the sale of Licensed Products, and floor plans. The City reserves the right to request additional financial information, as deemed necessary. Said application shall be signed by the applicant in person, and when received by the City Administrator shall be placed on file; provided, however, that no such application shall be received unless it is accompanied by the payment of a fee as provided for herein.

- (b) The City 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 City Council shall approve the license, the City Clerk shall issue the license to the applicant. If the City 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 City Council's decision. Grounds for denying the issuance or renewal of a license under this chapter include, but are not limited to the following:
 - (1) The applicant is under the age of 21 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 Licensed Products;
 - (3) The applicant has had a license to sell Licensed Products 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 a license;
 - (6) The application fails to meet the requirements of City Code;
 - (7) To protect the health, safety, and welfare of the City and its residents.
- (c) Revocation or suspension. The imposition of an administrative fine upon a licensee pursuant to Chapter 802.090 and/or suspension of license or revocations of a license will be processed pursuant to Little Canada City Code Chapter 800. The City Council may revoke or suspend a license granted under this chapter for any of the grounds identified in paragraph (b) of this section. 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 chapter. Licensees whose licenses have been revoked shall not be eligible for another license under this chapter for a minimum period of one year from date of said revocation.
- (d) Transfers. All licenses issued under this section 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 City Council.

802.040. LICENSE GRANTED BY RESOLUTION. The Council shall, after whatever investigation it deems necessary, by resolution grant the license applied for by such applicant, if in the opinion of the Council the applicant is entitled thereto. The issuance of a license issued under this section 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.

802.045. PROXIMITY RESTRICTION. No Tobacco Store or General Sales and Display license shall be granted pursuant to this section to any person for any retail sales of Licensed Products within 500 feet of any school, playground, house of worship, or youth-oriented facility, as measured by the shortest line between the space to be occupied by the proposed licensee and the occupied space of the school, playground, house of worship, or youth-oriented facility, unless that person has been in the business of selling Licensed Products in that location before the date this section was enacted into law for at least one year. For the purpose of this section, a “youth-oriented facility” is defined to include any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or which primarily sells, rents, or offers services or products that are consumed or used primarily by persons under the age of 21.

802.050. LICENSE FEE. The annual license fee shall be determined by resolution of the City Council. If the application is made after July 1, the annual fee shall be pro-rated on a monthly basis.

802.060. TERM. Licenses shall be for a term of one year. The annual license shall commence July 1 of each year.

802.070. LICENSE RESTRICTIONS. A license shall be issued subject to the following restrictions:

- (a) The following restrictions apply to premises licensed as a Tobacco Store:
 - (1) No person shall permit a person under the age of 21 to smoke Licensed Products for the purposes of sampling those products or provide samples of Licensed Products free of charge or at a nominal cost to a person under the age of 21.
 - (2) No more than 50% of the gross revenue of the store may be derived from the sale of tobacco-related devices.
 - (3) Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a retail tobacco license. Smoking lighting, heating and burning of Licensed Products, for the purposes of sampling Licensed Products is prohibited. Notwithstanding the preceding, smoking may occur in a Tobacco Store if all of the following circumstances are met:
 - i. The smoking is by a customer or potential customer for the specific purpose of sampling tobacco;
 - ii. The Tobacco Store has held a license from the City to sell Licensed Products at that location for at least six months prior to the May 2013 enactment of this provision; and
 - iii. The owner of the establishment has maintained a valid retail tobacco license and has abided by all applicable laws.
 - iv. Any smoking allowed under this exemption shall be prohibited if the license holder loses the license or transfers title to, relinquishes management or control of, or sells the business to any other individual or business entity.
 - (4) Smoking from electronic delivery device for any reason is strictly prohibited in any Tobacco Store.
- (b) The following restrictions apply to premises licensed for General Tobacco Sales and Display:

- (1) The establishment shall fully comply with the Minnesota Clean Indoor Air Act, Minn. Stat. § 144.411 to 144.417.
 - (2) There shall be no display of Licensed Products except for cigarette lighters for sale on the licensed premises, whether the sale is for the benefit of the licensee or for a third party (e.g. consignment).
- (c) The following restrictions apply to all licenses:
- (1) Vending machines used to dispense Licensed Products shall be prohibited.
 - (2) No sales shall be made 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 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.
 - (3) A licensee shall comply with all applicable regulations of the State of Minnesota relating to the sale or dispensing of Licensed Products. If there is a conflict between the regulations of the State and the regulations of the City, the more restrictive regulations shall control.
 - (4) Every licensee is responsible for the conduct of its employees while on the licensed premises. Any sale or other disposition of Licensed Products by an employee of a licensee shall be considered an act of the licensee.

802.080. SALES TO PERSONS UNDER THE AGE OF 21. No person shall give, sell or dispense any Licensed Products to a person under twenty-one (21) years of age. Any person aged 21 years or older convicted of violating this section shall pay a fine of \$100.00 for the first such conviction. Any person aged 21 years or older convicted of violating this section twice shall pay a fine of \$125.00. Any person aged 21 years or older convicted of violating this section three times shall pay a fine of \$150.00. Any person aged 21 years or older convicted of violating this section more than three times during any 24-month period may be guilty of a misdemeanor. Persons under the age of 21 who are convicted of violating this section may only be subject to non-criminal, non-monetary civil penalties such as tobacco-related education classes, diversion programs, community services, or another penalty that the city determines to be appropriate.

- (a) 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, 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.

802.090. ADMINISTRATIVE FINE, SUSPENSION, OR REVOCATION. Any violation of the City's regulations relative to the issuance of any license or of any conditions/restrictions attached to the issuance of such license shall be cause for the imposition of an administrative fine, the suspension of the license, or the revocation of the license.

- (a) If the violation relates to a restriction of Section 802.070 allowing a person under the age of 21 to sample a Licensed Product or providing to a person under the age of 21 a sample of a Licensed Product , the Council may suspend the license for up to 60 days or revoke the license. In addition to such action, or in lieu of such action, the Council may impose a civil fine not to exceed \$1,000.00 for each violation.
- (b) If the violation relates to the sale of Licensed Products to or provision of Licensed Products to a person under the age of 21, by the licensee or the licensee's employee, the following administrative fines, suspensions, or revocations shall be imposed.
 - (1) The first such violation shall subject the licensee to the payment of an administrative fine of \$200.00;
 - (2) The second violation at the same location within 24 months of a previous violation shall subject licensee to the payment of an administrative fine of \$500.00.
 - (3) The third violation at the same location within 24 months of two previous violations shall subject the licensee to the payment of an administrative fine of \$1,000.00 plus a seven (7) business day suspension of the license.
 - (4) The individual responsible for the sale to a minor shall be charged an administrative penalty of \$50.00, following notice of the violation and an opportunity for a hearing before the City Council.
 - (5) The City Council retains the discretion to consider suspension or revocation of a license at any time, if in the view of the Council the circumstances of the violation call for such a sanction.
- (c) The imposition of an administrative fine upon a licensee, and/or suspension of license or revocation of a license will be processed pursuant to Little Canada City Code Chapter 800. Licensees, whose licenses have been revoked, shall not be eligible for another General Sales and Display license or a Tobacco Store license for a minimum period of one year from the date of said revocation.

802.100. INSPECTION/COMPLIANCE CHECKS. Any applicant or licensee shall permit the City, or its representatives, to inspect and examine the place of business described in the application or license. Any refusal on the part of the applicant, or licensee, to permit such inspection

will be sufficient grounds for the Council to refuse the application applied for or suspend a license previously granted. The City of Little Canada, or its authorized representative, will conduct at least one compliance check that involves the participation of a person between the ages of 15 and 17 and at least one compliance check that involves the participation of a person between the ages of 18 and 20] to enter licensed premises to attempt to purchase Licensed Products. Prior written consent is required for any person under the age of 18 to participate in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel. Any finding of noncompliance with the requirements of this Chapter or other applicable regulations shall constitute a violation of this section.

802.105. VIOLATIONS.

(A) Violations.

- (1) Notice. A person violating this ordinance may be issued, either personally or by mail, a citation from the city that sets forth the alleged violation and that informs the alleged violator of his or her right to a hearing on the matter and how and where a hearing may be requested, including a contact address and phone number.
- (2) Hearings.
 - (a) Upon issuance of a citation, a person accused of violating this ordinance may request in writing a hearing on the matter. Hearing requests must be made within 10 business days of the issuance of the citation and delivered to the City Clerk or other designated city officer. Failure to properly request a hearing within 10 business days of the issuance of the citation will terminate the person's right to a hearing.
 - (b) 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 10 business days prior to the hearing.
- (3) Hearing Officer. The City Council 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.
- (4) Decision. A decision will be issued by the hearing officer within 10 business days of the hearing. If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed, will be recorded in writing, a copy of which will be provided to the city and the accused violator by in-person delivery or mail as soon as practicable. If the hearing officer finds that no violation occurred or finds grounds for not

imposing any penalty, those findings will be recorded and a copy will be provided to the city and the acquitted accused violator by in-person delivery or mail as soon as practicable. The decision of the hearing officer is final, subject to an appeal as described in section 11, division (A)(6) of this section.

- (5) **Costs.** If the citation is upheld by the hearing officer, the city's actual expenses in holding the hearing up to a maximum of \$1,000 must be paid by the person requesting the hearing.
- (6) **Appeals.** Appeals of any decision made by the hearing officer must be filed in Wilkin County district court within 10 business days of the date of the decision.
- (7) **Continued violation.** Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

802.110. SEVERABILITY. If any section or provision of this ordinance is held invalid, such invalidity will not affect other sections or provisions that can be given force and effect without the invalidated section or provision.

(Source: Ord. 3, Amended: Ord. 331, 441, 513, 689, 707, 716, 726, 742, 753, 755, 770, 779, 838)