

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, electronic delivery devices and nicotine or lobelia delivery products for the purpose of protecting the public and to further the official public policy of the state by enforcing and furthering existing laws, as it may be amended from time to time.

Commercial tobacco use causes disease and death and constitutes an urgent public health threat as it remains the leading cause of preventable death and disability in the United States, with 480,000 people dying prematurely in the United States from smoking-related diseases every year. In the United States, smoking is responsible for about 1 in every 5 deaths, more death each year than human immunodeficiency virus (HIV), illegal drug use, alcohol use, motor vehicle injuries, microbial agents and toxic agents combined.

802.010 DEFINITIONS. For the 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 sells or offers 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 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 does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as "drugs," "devices," or "combination products," as defined in the Federal Food, Drug and Cosmetic Act.
- (c) "Self-Service" means the open display of licensed products in a retail establishment in any manner where any person has access to the licensed products without the assistance or intervention of the licensee or the licensee's employee, and where a physical exchange of the licensed product from the licensee or the licensee's employee to the customer is not required in order to access the licensed products.

- (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 & Display in paragraph (a) of this section.
- (f) "Tobacco-Related Device" means any wraps, pipes, 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 who purchase or attempt to purchase licensed products. Compliance checks may also be conducted by the city or other units of government for educational, research and training purposes as authorized by local, state and federal laws and regulations relating to Licensed Products.
- (h) "Loosies" means the common term used to refer to single cigarettes, cigars, and any other licensed products that have been removed from their original retail packaging and offered for sale. Loosies does not include premium cigars that are hand-constructed, have a wrapper made entirely from whole tobacco leaf, and have a filler and binder made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor.
- (i) "Electronic Delivery Device" mean any product containing or delivering nicotine, lobelia or any other substance, whether natural or synthetic, 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, personal vaporizers, e-pipes, vape pens, mods, tank systems, or any other product name or descriptor. Electronic Delivery Device does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as "drugs," "devices," or "combination products," as defined by the Federal Food Drug and Cosmetic Act.
- (j) "Smoking" means inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, pipe, or any other lighted or heated product containing, made or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic that is intended for inhalation. Smoking also includes carrying or using an activated Electronic Delivery Device.
- (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” means the term that collectively refers to any tobacco product, tobacco-related device, or electronic delivery device, or nicotine, lobelia delivery product.
- (m) “Child-resistant packaging” means packaging that meets the definition set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, and was tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.
- (n) “Nicotine or Lobelia Delivery Product” means any product containing or delivering nicotine or lobelia, whether natural or synthetic, 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 nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drug,” “devices,” or “combination products,” as defined in the Federal Food, Drug and Cosmetic Act.
- (o) “Retail Establishment” means any place of business where Licensed Products are available for sale to the general public. Retail Establishment includes, but is not limited to, grocery stores, Tobacco Stores, liquor stores, convenience stores, gasoline service stations, bars, restaurants and establishments licensed for General Sales and Display as defined in this section.
- (p) “Sale” means any transfer of goods for money, trade, barter or other consideration.
- (q) “Youth-Oriented Facility” means any facility with residents, customers, visitors or inhabitants of which 25 percent or more are regularly under the age of 21 or that primarily sells, rents or offers services or products that are consumed or used primarily by persons under the age of 21. Youth-Oriented Facility includes, but is not limited to, schools, playgrounds, recreation centers and parks.
- (r) “Moveable Place of Business” means any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and that is not a fixed address or other permanent type of structure licensed for over-the-counter sales transactions.

802.020. LICENSE.

- (a) 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 premise meeting the definition in Chapter 802.010 (e); a General Sales and Display license is available to a premise meeting the definition in Chapter 802.010 (a).

- (b) Application for renewal. An application to renew a license to sell Licensed Products must be made on a form provided by the city. The application must contain:
- (1) 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;
 - (2) The business tax identification number of the licensee;
 - (3) The name(s) and address(es) of the owner(s), shareholder(s), or partner(s) of the business for which the license is sought, if any, for the preceding year; and,
 - (4) Any additional information the city deems necessary, including proof of licensure eligibility pursuant to this chapter.

Upon receipt of a completed application, the City Clerk will forward the application to the City Council for action at a regularly scheduled meeting. If the City Clerk determines that an application is incomplete, it will be returned to the applicant with notice of the information necessary to make the application complete.

- (c) Action. The City Council may approve or deny the application for renewal of a license, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary. If the City Council approves the application, the City Clerk will issue the license to the applicant. If the City Council denies the application, notice of the denial will be given to the applicant along with notice of the applicant's right to appeal the decision.
- (d) Term. All licenses shall be for a term of one year. The annual license shall commence July 1 of each year.
- (e) Revocation or suspension. Any license issued may be suspended or revoked following the procedures set forth in Section 802.120.
- (f) Transfers. All licenses issued are valid only on the premises for which the license was issued and only for the person to whom the license was issued. The transfer of any license to another location or person is prohibited.
- (g) Display. All licenses must be posted and displayed at all times in plain view of the general public in the retail establishment.
- (h) Renewals. The renewal of a license issued under this ordinance will be handled as required in this Chapter. The request for a renewal must be made at least 30 days, but no more than 60 days, before the expiration of the current license.
- (i) Issuance as privilege and not a right. The issuance of a license is a privilege and does not entitle the license holder to an automatic renewal of the license.

802.025. RESTRICTIONS ON NUMBER OF LICENSES AND SUNSETTING OF LICENSES.

- (a) License number restriction. The number of Tobacco Store Licenses within the City shall not exceed two (2). The number of General Sales and Display Licenses shall not exceed five (5).
- (b) Sunset on Tobacco Retail Licenses. The city will not issue any new licenses for the sale of licensed products after May 25, 2022. The city will only renew existing licenses that were issued by May 25, 2022. Licenses may be renewed subject to the provisions of this chapter, provided that:
 - 1. A license is only eligible for renewal by the same natural person who holds the license on May 25, 2022 for the premises set forth in the approved application. Eligible parties will lose the existing license if they fail to renew it by June 30 each year, or if the license is revoked for any reason.
 - 2. A license held by a person as defined by this ordinance that is not a natural person, including LLC, Partnership, or Corporation, or other business organization, is only eligible for renewal provided there has not been a change of 50% or more of the owners, shareholders or partners in place as of May 25, 2022.

802.030. BASIS FOR DENIAL. Grounds for denying the renewal of a license under this chapter include, but are not limited to the following:

- (a) The applicant is under the age of 21 years;
- (b) 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;
- (c) The applicant has had a license to sell Licensed Products revoked within the preceding 12 months of the date of application;
- (d) The applicant fails to provide any information required on the application, or provides false or misleading information;
- (e) The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a license;
- (f) The application fails to meet the requirements of City Code;
- (g) The business for which the license is requested is a Moveable Place of Business;
- (h) To protect the health, safety, and welfare of the City and its residents.

802.040. LICENSE GRANTED BY RESOLUTION. The Council shall, after whatever investigation it deems necessary, by resolution grant the license renewal 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 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 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.

802.050. LICENSE FEE. The annual license fee shall be determined by resolution of the City Council.

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 retail establishments licensed as Tobacco Stores:
 - (1) The Tobacco Store prohibits persons under the age of 21 from being present or entering all times.
 - (2) The Tobacco Store must have an entrance door opening directly to the outside.
 - (3) The Tobacco Store must derive at least 90 percent of its gross revenues from the sale of Licensed Products.
 - (4) 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.
 - (5) 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 has the license revoked or transfers title to, relinquishes

management or control of, or sells the business to any other individual or business entity.

v. Sunset on sampling and indoor smoking. Sampling and smoking inside a Tobacco Store is prohibited after June 30, 2024.

(6) Smoking from an electronic delivery device for any reason is strictly prohibited in any Tobacco Store.

(b) The following restrictions apply to Retail Establishments licensed for General Tobacco Sales and Display:

(1) Smoking prohibited. Smoking, including smoking for the purpose of the sampling of licensed products is prohibited within the indoor area of any retail establishment licensed under this ordinance. The establishment shall fully comply with the Minnesota Clean Indoor Air Act, Minn. Stat. § 144.411 to 144.417.

(2) All licensed products must be stored behind the sales counter, in a locked case, in a storage unit, or in another area not freely accessible to the general public. Any retailer selling licensed products at the time this ordinance is adopted must comply within 90 days of the effective date of this ordinance.

(3) Samples prohibited. No person may distribute samples of any Licensed Product free of charge or at a nominal cost. The distribution of Licensed Products as a free donation is prohibited.

802.080. PROHIBITED SALES.

(a) In general, no person shall sell or offer to sell any Licensed Product:

(1) By means of any type of Vending Machine.

(2) By means of Loosies.

(3) Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other hallucinogenic, toxic or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other products subject to this ordinance.

(4) 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.

(5) If there is a conflict between regulation of the State and regulation of the City, the more restrictive regulations shall control.

- (b) Legal Age. No person shall sell any Licensed Product to any person under the age of 21.
 - (1) Age verification. Licensees must verify by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.
 - (2) Signage. Notice of the legal sales age, age verification requirement and possible penalties for underage sales must be posted prominently and in plain view at all times at each location where Licensed Products are offered for sale. The required signage may be provided to the licensee by the City and must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.
- (c) Liquid packaging. No person shall sell, offer to sell any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device, in packaging that is not Child-Resistant. Upon request by the city, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

802.090. RESPONSIBILITY. All licensees are responsible for the actions of their employees regarding the sale, offer to sell and furnishing of Licensed Products on the licensed premises. The sale, offer to sell or furnishing of any Licensed Products by an employee shall be considered an act of the licensee.

802.100. INSPECTION/COMPLIANCE CHECKS. All licensed premises must be open to inspection by law enforcement or other authorized city officials during regular business hours. 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 by the licensed premises to permit such inspection will be sufficient grounds for the Council to suspend or revoke a license previously granted. The City of Little Canada, or its authorized representative, will conduct at least two compliance checks that involves the participation of a person between the ages of 17 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. OTHER PROHIBITED ACTS. Unless otherwise provided, the following acts are an administrative violation of this ordinance:

- (a) Prohibited furnishing or procurement. It is a violation of this ordinance for any person 21 years of age or older to purchase or otherwise obtain any Licensed Product on behalf of a person under the age of 21. It is also a violation for any person 21 years of age and older to coerce or attempt to coerce a person under the age of 21 to purchase or attempt to purchase any Licensed Product.

- (b) Use of false identification. It is a violation of this ordinance for any person to use any form of false identification, whether the identification is that of another person or has been modified or tampered with to represent an age older than the actual age of the person using that identification.

802.110. EXCEPTIONS AND DEFENSES.

- (a) Religious, Spiritual or Cultural Ceremonies or Practices. Nothing in this ordinance prevents the provision of tobacco or tobacco-related devices to any person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.
- (b) Reasonable Reliance. It is an affirmative defense to a violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

802.120. VIOLATIONS AND PENALTIES.

- (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 802.120 (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 Ramsey 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.
- (b) Administrative Penalties. Any violation of the City's regulations relative to the issuance of any license or any conditions or restrictions attached to the issuance of such license shall be cause for the imposition of an administrative fine, the suspension of the license, or revocation of the license.
- (1) Licensees. Any licensee cited for violating this ordinance, or whose employee has violated this ordinance, will be charged an administrative fine of \$300 for the first violation; \$600 for the second offense at the same licensed premises within a 36-month period; and \$1,000 for a third or subsequent offense at the same location within a 36-month period. Upon the third violation, the license will be suspended for a period of not less than 30 consecutive days, and may be revoked. Upon a fourth violation within a 36-month period, the license will be revoked.
 - (2) Employees of licensees and other individuals. Individuals, other than persons under the age of 21 regulated by paragraph (b)(3) of this section, who are found to be in violation of this ordinance may be charged an administrative fine of \$50.
 - (3) Persons under the age of 21. Persons under the age of 21 who use a false identification to purchase or attempt to purchase Licensed Products may only be subject to non-criminal, non-monetary civil penalties or remedies such as tobacco-related education classes, diversion programs, community services, or another non-monetary, civil penalty that the city determines to be appropriate. The City Council may consult with educators, parents, guardians, persons under the age of 21, public health officials, court personnel and other interested parties to determine an appropriate remedy in the best interest of the underage person. The remedies for persons under age 21 who use false identification to purchase or attempt to purchase Licensed Products may be established by ordinance and amended from time to time.

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 City 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 for each violation.

- (4) Misdemeanor prosecution. Nothing in this section prohibits the city from seeking prosecution as a misdemeanor for an alleged second violation of this ordinance by a person 21 years of age or older within five years of a previous conviction under the ordinance.

802.130. 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, 864)