

(4) That the applicant, its managers or employees refused to answer questions concerning its application or operations asked by the police or the administrative assistant;

(5) That the applicant failed to pay any city tobacco license fees when due;

(6) The applicant is under the age of 21 years.

Section 3. That Section 11-5 of the Duluth City Code be amended as follows:

Sec. 11-5. Same--Revocation or suspension, administrative penalties.

(a) Every license issued under this Chapter may be suspended up to 60 days or revoked by the alcohol, gambling and tobacco commission for any cause set forth in paragraph (b) of this Section after a public hearing held for such purpose, notice of which shall be mailed to the licensee at his or her place of business ten days before the holding of such hearing. Any decision to suspend or revoke a license shall be made in writing. Any licensee aggrieved by a decision of the alcohol, gambling and tobacco commission may appeal such decision to district court as provided in Minnesota Statutes, Section 461.12, Subd. 7;

(b) The following shall be good cause to revoke or suspend a tobacco license:

(1) That the ~~applicant~~ licensee, its managers or employees violated any ordinance or state or federal statute or regulation which relates to the sale or possession of tobacco or tobacco related devices;

(2) That the ~~applicant~~ licensee, its managers or employees were convicted of a crime that directly relates to the sale of tobacco or tobacco related devices and have not been rehabilitated within the meaning of Minnesota Statutes, Chapter 364;

(3) That the applicant made material misstatements of fact or omissions of fact on its present or past applications;

(4) A refusal by the ~~applicant~~ licensee or its managers or employees to cooperate with the police in any investigation of unlawful tobacco sales;

(c) If a licensee or employee of a licensee sells tobacco or tobacco related devices to a person under the age of ~~18~~ 21 years, or violates any other provision of this Chapter, the licensee shall be charged an administrative penalty set in accordance with Section 31-8 of this Code. An administrative penalty set in accordance with Section 31-8 of this Code must be imposed for a second violation at the same location within 24 months after the initial violation. For a third violation at the same location within 24 months after the initial violation, an administrative penalty set in accordance with Section 31-8 of this Code must be imposed, and the licensee's authority to sell tobacco at that location must be suspended for not less than seven days. No penalty or suspension under this paragraph shall be imposed until the licensee has been served personally by mail with notice of the alleged violation and been given an opportunity for a hearing as provided in paragraph (a) of this Section;

(d) If it appears that a licensee or the licensee's employees acting under the scope of the license have sold tobacco or tobacco related devices to persons under ~~18~~ 21 years of age or otherwise violated this Chapter on four separate occasions during any 24 month period, the alcohol, gambling and tobacco commission must set a disciplinary hearing for the licensee. If, at the hearing, it is shown that the licensee or licensee's employees did sell tobacco to persons under ~~18~~ 21 years of age or otherwise violated this Chapter on four separate occasions in a 24 month period, the alcohol, gambling and tobacco commission must revoke the license. In addition, the licensee shall be ineligible to apply for a cigarette license in the next succeeding license year;

(e) An individual who sells tobacco to a person under the age of ~~18~~21 years must be charged an administrative penalty set in accordance with Section 31-8 of this Code. No penalty may be imposed until the individual has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing as provided in paragraph (a) of this Section.

Section 4. That Section 11-8 of the Duluth City Code be amended as follows:

Sec. 11-8. Sales to ~~minors~~persons under the age of 21 prohibited.

(a) No person, or any clerk, servant, employee or agent of any such person, directly or indirectly, upon any pretense or by any mechanical device, shall sell, exchange, barter, dispose of or give away, to any person below the age of ~~18~~21 years, any tobacco or tobacco related devices;

(b) It shall be the affirmative duty of every licensee and their employees ~~seller of tobacco or tobacco related devices~~ to ascertain the age of every prospective purchaser who reasonably appears to be ~~19~~30 years of age or less;

(c) Proof of age for purchasing tobacco or tobacco related devices may be established only by one of the following:

(1) A valid driver's license or identification card issued by Minnesota, another state, or a province of Canada, and including the photograph and date of birth of the licensed person;

(2) A valid military identification card issued by the United States department of defense; or

(3) In the case of a foreign national, from a nation other than Canada, by a valid passport;

(d) In a prosecution under this Section, it is a defense for the defendant to prove by a preponderance of the evidence that the defendant reasonably and in good faith relied upon representations of proof of age authorized in paragraph (c) in selling, bartering, furnishing, or giving the tobacco or tobacco related devices.

Section 5. That Section 11-9 of the Duluth City Code relating to possession, use and purchase of tobacco products by minors is hereby repealed in its entirety.

Section 6. That Section 11-10 of the Duluth City Code be amended as follows:

Sec. 11-10. Self-service merchandising.

(a) No person shall offer for sale tobacco or tobacco related devices in open displays which are accessible to the public without the intervention of a store employee. No business establishment licensed under this Chapter shall sell tobacco in any manner except by having the licensee or an employee of the licensee physically deliver the tobacco to the customer;

(b) It shall be an affirmative defense in any prosecution under this Section for the defendant to show by a preponderance of the evidence that the alleged sale of tobacco or tobacco related devices took place in an establishment licensed to sell tobacco or tobacco related devices that:

(1) Holds itself out as a store that sells only tobacco and tobacco-related products;

(2) Prohibits persons under ~~18~~21 years of age from entering or remaining on the premises and has posted signs at the establishment's entrance informing customers that they must be at least ~~18~~21 years old to enter;

(3) Derives at least 90 percent of its revenues from the sale of tobacco or tobacco related products as shown by business records it keeps in the ordinary course of business.

Section 7. That Section 11-11 of the Duluth City Code be amended as follows:

Sec. 11-11. Sales of flavored tobacco products restricted.

(a) No person shall sell, offer for sale or otherwise distribute any flavored tobacco products. This restriction does not apply to retail establishments that:

(1) Prohibit persons under the age of ~~18~~21 from entering at all times; and

(2) Derive at least ninety percent of their revenues from the sale of tobacco, tobacco-related devices.

(b) Any retail establishment that sells flavored tobacco products must provide upon request financial records that document annual sales.

(c) Flavored tobacco product means any tobacco or tobacco related device that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during consumption or use of the tobacco product or tobacco related device, including, but not limited to, any taste or smell relating to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, fruit, or any candy, dessert, alcoholic beverage, herb or spice. A public statement or claim, whether express or implied, made or disseminated by a manufacturer of tobacco or tobacco related devices, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such products, that a product has or produces a taste or smell other than tobacco will constitute presumptive evidence that the product is a flavored tobacco product.

Section 8. That this ordinance shall take effect and be in force ~~30~~ 120 days after its passage and publication.

STATEMENT OF PURPOSE: This ordinance prohibits the distribution of tobacco products to recipients under the age of 21 years and deletes provisions related to the possession, use and purchase of tobacco by minors. Minnesota state law prohibits the possession, use and purchase of tobacco, tobacco-related devices, or electronic delivery devices by persons under the age of 18 years. See, Minn. Stat. 609.685 Subd. 3.