

**CITY OF SCANDIA  
ORDINANCE NO. 92**

**AN ORDINANCE REGULATING THE SALE AND USE OF TOBACCO PRODUCTS  
WITHIN  
THE CITY OF SCANDIA**

The City Council of the City of Scandia hereby ordains:

The City Council of the City of Scandia hereby adopts the following regulations pertaining to the sale and use of tobacco products within the City of Scandia:

- Section 1. Definitions and interpretations
- Section 2. License
- Section 3. License restrictions
- Section 4. Fees
- Section 5. Basis for denial of license
- Section 6. Prohibited sales
- Section 7. Vending machines
- Section 8. Tobacco display and storage
- Section 9. Responsibility
- Section 10. Compliance checks and inspections
- Section 11. Other illegal acts
- Section 12. Administrative fines
- Section 13. Revocation hearing
- Section 14. Exceptions and defenses
  
- Section 98. Violations

**SECTION 1. DEFINITIONS AND INTERPRETATIONS.**

For the purpose of this Ordinance 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 Ordinance. **COMPLIANCE CHECKS** may involve the use of minors as authorized by this Ordinance.

**INDIVIDUALLY PACKAGED.** 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 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 5 or more single packs or other containers as described in this Ordinance shall not be considered individually packaged.

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

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 store front 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 packaged in packages of 4 or fewer individually wrapped containers which are accessible to the public without the intervention of an employee. Self-service merchandising shall not include vending machines.

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; cheroot; 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 such 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 used in a manner which enables the chewing, sniffing or smoking of tobacco or tobacco products.

VENDING MACHINE. 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.

## **SECTION 2. LICENSE.**

No person shall sell or offer to sell any tobacco, tobacco products or tobacco related device without first having obtained a license to do so from the city.

(A) Application. 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 names 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 Clerk shall forward the application to Council for action at its next regularly scheduled Council meeting. If the Clerk shall determine that an application is incomplete, application shall be returned to the applicant with notice of the information necessary to make the application complete.

(B) Action. The Council may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the Council approves the license, the 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.

(C) Term. All licenses issued under this section shall be valid for the current calendar year in which the license is issued except that if a retail establishment conducts sales for six months or less in a calendar year it shall be granted a seasonal license.

(D) Revocation or suspension. Any license issued under this section may be revoked or suspended as provided in this Ordinance.

(E) 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 section.

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

(G) Renewals. The renewal of a license issued under this section shall be processed in the same manner as the original application. The request for a renewal shall be made at least 30 days but no more than 60 days before the expiration of the current license.

### **SECTION 3. LICENSE RESTRICTIONS.**

A license shall be issued subject to the following restrictions.

(A) No license shall be issued to any applicant for the sale of tobacco, tobacco products or tobacco related devices at any place other than the applicant's established place of business.

(B) No license shall be issued for the sale of tobacco, tobacco products or tobacco related devices at a moveable place of business.

(C) No license shall be issued for the sale of tobacco, tobacco products or tobacco related devices at more than one place of business.

(D) No person shall sell or dispense any tobacco, tobacco products or tobacco related devices through the use of a vending machine except as provided in Section 7.

(E) No individually packaged tobacco product shall be offered for sale by means of self-service merchandising.

(F) Every licensee shall be responsible for the conduct of its employees while on the licensed premises and any sale or other disposition of tobacco products by an employee to a person under 18 years of age shall be considered an act of the licensee for purposes of imposing an administrative fine, license suspension or revocation.

#### **SECTION 4. FEES.**

No license shall be issued under this Ordinance until the appropriate license fee shall be paid in full. Fees shall be set from time to time by the City Council by resolution.

#### **SECTION 5. BASIS FOR DENIAL OF LICENSE.**

(A) The following shall be grounds for denying the issuance or renewal of a license under this chapter:

- (1) The applicant is under the age of 18 years;
- (2) The applicant has been convicted within the past 5 years of any violation of a federal, state, or local law, ordinance provision or other regulation relating to tobacco, 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 the 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 such a license.

(B) Except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license. If a license is mistakenly issued or renewed it shall be revoked upon the discovery that the person was ineligible for the license under this Ordinance.

#### **SECTION 6. PROHIBITED SALES.**

It shall be a violation of this Ordinance for any person to sell or offer to sell any tobacco product or tobacco related device:

- (A) To any person under the age of 18 years;

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

(C) By means of self-service merchandising, as defined in Section 1, whereby the customer is not required to make a verbal or written request to an employee of the licensed premises in order to receive the tobacco, tobacco product or tobacco related device;

(D) By means of loosies, as defined in Section 1;

(E) Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other type of deleterious, hallucinogenic, or toxic or controlled substance except nicotine and not naturally found in tobacco or tobacco products;

(F) By any other means, or to any other person prohibited by federal, state or other local law, ordinance, provision or other regulation.

#### **SECTION 7. VENDING MACHINES.**

It shall be unlawful for any person under this Ordinance to allow the sale of tobacco, tobacco products or related devices by means of a vending machine unless the vending machine was used and in operation at a tobacco licensed business prior to January 1, 1997.

#### **SECTION 8. TOBACCO DISPLAY AND STORAGE.**

All individually packaged tobacco, tobacco products and tobacco related devices as defined in Section 1 shall 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.

#### **SECTION 9. RESPONSIBILITY.**

All licensees under this Ordinance 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 such an item by an employee shall be considered a sale by the license holder. Nothing in this Ordinance shall be construed as prohibiting the city from also subjecting the employee to whatever penalties are appropriate under this Ordinance, state law or other applicable law or regulation.

#### **SECTION 10. COMPLIANCE CHECKS AND INSPECTIONS.**

All licensed premises shall be open to inspection by the City peace officer or other authorized city official during regular business hours. From time to time, but at least once per year, the city shall conduct compliance checks by engaging minors to enter the licensed premises 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 related devices when such items are obtained as part of the compliance check. 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 minors age asked by the licensee or his or her employee and shall produce any identification for which the minor is asked.

### **SECTION 11. OTHER ILLEGAL ACTS.**

Unless otherwise provided, the following acts shall be a violation of this section.

(A) Illegal possession. It shall be a violation of this Ordinance for any minor to have in the minor's possession any tobacco, tobacco product or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check on behalf of the city or who have only temporary possession during a legal sales transaction.

(B) Illegal use. It shall be a violation of this Ordinance for any minor to smoke, chew, sniff or otherwise use any tobacco, tobacco product or tobacco related device.

(C) Illegal procurement. It shall be a violation of this Ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product or tobacco related device. It shall be a violation of this Ordinance for any person to purchase or otherwise obtain such items on behalf of a minor. It shall be a violation of this Ordinance for any person to sell or otherwise provide any tobacco, tobacco product or tobacco related device to any minor or 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 subdivision shall not apply to minors lawfully involved in a compliance check on behalf of the city.

(D) Use of false identification. It shall be a violation of this Ordinance for any minor to attempt to disguise the minor's 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 altered, to represent an age older than the actual age of the person.

### **SECTION 12. ADMINISTRATIVE FINES.**

(A) Any violation of the restrictions attached to a tobacco product license shall be cause for a fine, suspension or revocation of the license. The first violation shall result in an administrative fine of \$100 to the license holder, payable to the city. Failure to pay the fine within 30 days from the date of invoice shall result in a 2 day license suspension. A second violation within 12 months shall result in a fine of \$250 payable to the city and result in a 5 day license suspension. Failure to pay the fine within 30 days from the date of the invoice shall result in a 10 day license suspension. A third violation within 12 months, or for sales during a license suspension, shall result in a license revocation and prosecution as a misdemeanor.

(B) Licensees whose licenses have been revoked shall not be eligible for another tobacco product license for one year from the date of revocation. The City Council may attach reasonable conditions to the reinstatement of a suspended or revoked license.

(C) The accused violator may at any time withdraw from the administrative penalty process and elect to have the case heard in court under a misdemeanor prosecution. Upon discovery of a suspected violation, the violator may be issued a citation by the City peace officer and given notice of the violator's right to be heard on the accusations.

**SECTION 13. REVOCATION HEARING.**

Revocation or suspension of a license shall be preceded by a hearing before the City Council. A hearing notice shall be given to the licensee at least 10 days prior to the hearing. The notice shall include the time and place of the hearing and shall state the nature of the charge against the licensee.

**SECTION 14. EXCEPTIONS AND DEFENSES.**

Nothing in this Ordinance shall prevent the providing of tobacco, tobacco products or tobacco related device to a minor as part of a lawfully recognized religious, spiritual or cultural ceremony. It shall be an affirmative defense to the violation of this Ordinance for a person to have reasonably relied on proof of age as described by state law.

**SECTION 98. VIOLATIONS.**

Any person found to be in violation of this Ordinance shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished according to law.

Passed and adopted by the City Council of the City of Scandia this 2nd day of January, 2007.

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Dennis D. Seefeldt, Mayor

ATTEST:

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Anne Hurlburt, Clerk/Administrator