

City of Red Lake Falls Tobacco Ordinance

An ordinance relating to the sale, possession, and use of tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products in the city and to reduce the illegal sale, possession, and use of such items to and by minors.

The City of Red Lake Falls Ordains:

PART 4. TOBACCO SALES

Section 504.01. Authority. The City of Red Lake Falls shall license and regulate the sale of tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products within its City limits pursuant to its authority granted by Minn. Stat. § 461.12

Section 504.02. Purpose and Intent. Because the City of Red Lake Falls recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products, and such sales, possession, and use are violations of both state and federal laws; because studies, which are hereby accepted and adopted, have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and because 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, possession and use of tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke and using other tobacco products as stated in Minn. Stat. § 144.391.

Section 504.03. Definitions and Interpretations. Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice-versa. The term “shall” means mandatory and the term “may” means permissive. The following terms shall have the definitions given to them:

Subd. 1. Child-Resistant Packaging. “Child Resistant Packaging” shall mean 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.

Subd. 2. Compliance Checks. “Compliance Checks” shall mean the system the City uses to investigate and ensure that those authorized to sell tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of minors as authorized by this ordinance. Compliance checks shall also mean the use of minors who attempt to purchase tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products for education, 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, and local laws, and regulations relating to tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products.

Subd. 3. Electronic Delivery Device. “Electronic Delivery Device” shall mean any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device shall include any component part of such a product whether or not sold separately. Electronic delivery device shall not include any product that has been approved or otherwise certified by the United States Food and Drug Administration for sale as a tobacco-cessation product or for other medical purposes, and is being marketed and sold solely for that approved purpose.

Subd. 4. Individually Packaged. “Individually Packaged” shall mean the practice of selling any tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not limited to, single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff, chewing tobacco, electronic delivery devices, or nicotine or lobelia delivery devices. Cartons or other packaging containing more than a single pack or other container as described in this subdivision shall not be considered individually packaged.

Subd. 5. Indoor Area. An “Indoor Area” is all the space between the 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 physical barrier, whether temporary or permanent. A standard (0.011 gauge) window screen is not considered a wall.

Subd. 6. Loosies. “Loosies” shall mean the common term used to refer to a single or individually packaged cigarette or cigar. The term “loosies” does not include individual cigars with a retail price before any sales tax of more than \$2.00 per cigar.

Subd. 7. Minor. “Minor” shall mean any natural person who has not yet reached the age of eighteen (18) years.

Subd. 8. Moveable Place of Business. “Moveable Place of Business” shall refer to any form of business operated out of a kiosk, 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.

Subd. 9. Nicotine or Lobelia Delivery Products. “Nicotine or Lobelia Delivery Products” shall mean any product containing or delivering nicotine 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, not including any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for such approved purpose.

Subd. 10. Retail Establishment. “Retail Establishment” shall mean any place of business where tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery

products are available for sale to the general public. Retail establishments shall include, but not limited to, grocery stores, convenience stores, restaurants and drug stores that sell tobacco.

Subd. 11. Sale. A “sale” shall mean any transfer of goods for money, trade, barter, or other consideration.

Subd. 12. Self-Service Merchandising. “Self-Merchandising” shall mean open displays of tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products in any manner where any person shall have access to the tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery 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 tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

Subd. 13. Smoke or Smoking. “Smoke” or “Smoking” shall mean inhaling or exhaling smoke from any instrumentality, including but not limited to any cigar, cigarette, pipe, hookah pipe or operating an electronic cigarette, or having in possession any such instrumentality producing smoke or engaging in any act that generates smoke. Smoking shall include carrying a lighted or heated cigarette, cigar, or pipe or any other lighted or heated tobacco or plant product intended for inhalation or carrying an electronic delivery device that is turned on or otherwise activated.

Subd. 14. Tobacco or Tobacco Products. “Tobacco” or “Tobacco Products” shall include 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; 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 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.

Subd. 15. Tobacco Related Devices. “Tobacco Related Devices” shall mean any pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, or smoking of tobacco or tobacco products or the inhalation of vapor from an electronic delivery device. Tobacco related devices include accessories or components of tobacco-related devices, which may be marketed or sold separately.

Subd. 16. Vending Machine. “Vending Machine” shall mean any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products upon the insertion of money, tokens, other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product.

Section 504.04. License. No person shall sell or offer to sell any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product in the City of Red Lake Falls without a valid license to sell such product in the City.

Subd. 1. Application. Any application for a license to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery 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 name 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 Administrator shall forward the application to the City Council for action at its next regularly scheduled board meeting. If the City Administrator shall determine that an application is incomplete; he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

Subd. 2. Action. The City may either approve or deny the license, or it may delay action for such reasonable period of time as necessary, but for no less than 45 days, to complete any investigation of the application or applicant it deems necessary. If the City Council shall approve the license, the City Administrator 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 decision.

Subd. 3. Term. All licenses issued under this ordinance shall be valid for one calendar year from the date of issue.

Subd. 4. Revocation or Suspension. Any license issued under this ordinance may be revoked or suspended as provided in sections 504.15 and 504.16 of this Ordinance.

Subd. 5. Transfers. All licenses issued under this ordinance 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.

Subd. 6. 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 ordinance.

Subd. 7. Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

Subd. 8. Renewals. The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least thirty (30) days but not more than sixty (60) days before the expiration of the current license.

Subd. 9. Issuance as a Privilege and Not a Right. The issuance of a license issued under this Ordinance 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.

Subd. 10. Smoking Prohibited. Smoking shall not be permitted and no person shall smoke within the indoor area of any retail establishment with a retail license. Smoking for the purposes of sampling tobacco, tobacco-related devices, or electronic delivery devices would be prohibited in tobacco retail stores.

Section 504.05. Fees. No license shall be issued under this Ordinance until the appropriate license fee has been paid in full. The fee for a license under this Ordinance shall be determined by the City Council.

Section 504.06. Training. All licensed tobacco retailers and their staff may attend a one-hour, annual training to learn about and comply with the federal, state and local laws on the sale of tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products. Any offered training performed, must be pre-approved by the City.

Section 504.07. Basis for Denial of License. The following shall be grounds for denying the issuance or renewal of a license under this Ordinance; however, 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 to a person, it shall be revoked immediately upon the discovery that the person was ineligible for the license under this Section:

- A. The applicant is under the age of 18 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 tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products.
- C. The applicant has had a license to sell tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products suspended or revoked with the preceding twelve 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 such a license.

Section 504.08. Prohibited Sales. It shall be a violation of this Ordinance for any person to sell or offer to sell any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product:

- A. To any person under the age of eighteen (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 methods whereby the customer does not need to make verbal or written request to an employee of the licensed premise in order to receive the tobacco, tobacco related devices and whereby there is not a physical exchange of the tobacco, tobacco related device, electronic delivery devices, and nicotine or lobelia delivery products between the licensee or the licensee's employee and the customer.
- D. By means of loosies as defined in Section 300 of this ordinance.

- E. Containing opium, morphine, jimson weed, bella donna, 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.
- F. By any other means, to any other person, or in any other manner or form prohibited by federal, state, or local law, ordinance provision, or other regulation.

Section 504.09. Vending Machines.

It shall be unlawful for any person licensed under this ordinance to allow the sale of tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.

Section 504.10. Liquid Packaging.

Any liquid, whether or not such liquid contains nicotine, intended for human consumption and sold for use in an electronic delivery device must be sold in a child-resistant packaging. Upon request, a licensee shall provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

Section 504.11. Self-Service Sales. It shall be unlawful for a licensee under this Ordinance to allow the sale of tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product between the licensee or his or her clerk and the customer. All tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products, shall either be stored behind the counter or other area not freely accessible to customers, or in case or other storage unit not left open and accessible to the general public within thirty (30) days of the effective date of this Ordinance.

Section 504.12. Responsibility. All licensees under this Ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products 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 Section shall be construed as prohibiting the City from also subjecting the clerk to whatever penalties are appropriate under this Ordinance, state or federal laws, or other applicable law or regulation.

Section 504.13. Compliance Checks and Inspections. All licensed premises shall be open to inspection by the Red Lake County Sheriff's Department during regular business hours. From time to time, but at least once per year, the city or their designee shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age of fifteen (15) years, but less than eighteen (18) years, to enter the licensed premise to attempt to purchase tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products. Minors used for the purpose of compliance checks shall be supervised by designated law enforcement officers or other designated city personnel. Minors used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase nor the unlawful possession of tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products, when such items are obtained or attempted to be obtained as a 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 minor's age asked by the licensee or his or her employee and shall provide any

identification, if any exists, for which he or she is asked. Nothing in this Section shall prohibit compliance checks authorized by the state or federal laws for education, research, or training purposes, or required for the enforcement of a particular state or federal law.

Section 504.14. Other Illegal Acts. Unless otherwise provided, the following acts shall be a violation of this ordinance.

Subd. 1. Illegal Sales. It shall be a violation of this Ordinance for any person to sell or otherwise provide any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product to a minor.

Subd. 2. Illegal Possession. It shall be a violation of this ordinance for any minor to have in his or her possession any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product. This subdivision shall not apply to minors lawfully involved in a compliance check.

Subd. 3. Illegal Use. It shall be a violation of this ordinance for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery product.

Subd. 4. 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 related devices, electronic delivery devices, or nicotine or lobelia delivery product, and 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 further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery product.

Subd. 5. Use of False Identification. It shall be a violation of this ordinance for any minor to attempt to disguise his or her 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 tampered with to represent an age older than the actual age of the person.

Section 504.15. Violations.

Subd. 1. Notice. Upon discovery of a suspected violation, the alleged violator shall be issued a citation from the Red Lake County Sheriff, either personally or by certified mail, that sets forth the alleged violation and which shall inform the alleged violator of his or her right to be heard on the accusation.

Subd. 2. Hearings. If a person accused of violating this Ordinance so requests in writing, a hearing shall be scheduled within 10-14 days of the violation or such right will be forfeited, the time and place of which shall be published and provided to the accused violator.

Subd. 3. Hearing Officer. The City official designated by the City Council or its designee shall serve as the hearing officer. The hearing officer must be an impartial person retained by the City to conduct the hearing.

Subd. 4. Decision. 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 under Section 1600 of this Ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.

Subd. 5. Appeals. Appeals of any decision made by the hearing officer shall be filed in the District Court of Red Lake County.

Subd. 6. Misdemeanor Prosecution. Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this ordinance. If the City elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.

Subd. 7. Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense. If a penalty were lower than the penalty for the infraction under state law, the state law penalty would apply.

Section 504.16. Penalties.

Subd. 1. Licensees. Any licensee found to have violated this Ordinance, or whose employee shall have violated this Ordinance, shall be charged an administrative fee of \$75.00 for a first violation of this ordinance; \$200.00 for a second offense at the same licensed premises within a twenty-four (24) month period; and \$250.00 for a third and subsequent offense at the same location within a twenty-four (24) month period. In addition, after the third offense, the license shall be revoked. The license shall not be re-issued for a period of at least six (6) months.

Subd. 2. Other Individuals. Other individuals found to be in violation of this Ordinance shall be charged an administrative fine of \$50.00 for the first violation of this section, \$100.00 fine for the second violation of this section within a twelve (12) month period, and a \$150.00 fine for a third violation of within a twelve (12) month period.

Subd. 3. Minors. Minors found in unlawful possession of, or who unlawfully purchase or attempts to purchase tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia products shall be subject to an administrative fine, or may be subject to tobacco-related education classes, diversion programs, community services, or another penalty that the City believes will be appropriate and effective. The administrative fine or other penalty shall be established by City Ordinance upon the City Council's consultation with interested parties of the courts, educators, parents and children to determine an appropriate penalty for minors in the city.

Subd. 4. Misdemeanor. Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any violation of this ordinance.

Section 504.17. Exceptions and Defenses. Nothing in this Ordinance shall prevent the providing of tobacco or tobacco related devices, 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 504.18. Severability and Savings Clause. If any section or portion of this Ordinance shall be found to be unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction,

that finding shall not serve as an invalidation or effect the validity and enforceability of any other section or provision of this Ordinance.

Section 504.19. Date of Adoption. This Ordinance is hereby adopted by the Red Lake Falls City Council on August 24, 2015.