

ARTICLE III. TOBACCO

Sec. 9-29. Purpose and Intent. Because the city recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery devices and nicotine or lobelia delivery devices, and the sales, possession, and use are violations of both state and federal laws; and because studies 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 smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this article intends to regulate the sale, possession, and use of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery devices and nicotine or lobelia delivery devices for the purpose of enforcing and furthering existing laws to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery devices and nicotine or lobelia delivery devices and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke as stated in Minnesota Statutes, section 144.391, as amended from time to time.

Sec. 9-30. Definitions. Except as otherwise provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- (1) **Background Investigation** shall refer to the investigation conducted by the police department of all tobacco license applicants, all parties having any formal or informal ownership stake in the business, and any person(s) identified as a manager of the proposed retail establishment. The purpose of the background investigation is to determine if there are any disqualifying factors that would preclude the issuance of a license to the applicant or the proposed retail establishment location.
- (2) **Cigars** shall refer to any roll of tobacco that is wrapped in tobacco leaf or in any substance containing tobacco, with or without a tip or mouthpiece, that is not a cigarette as defined in Minnesota Statutes, section 297F.01, subd. 3 as amended from time to time.
- (3) **Compliance Checks** shall mean the system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery devices and nicotine or lobelia delivery devices are following and complying with the requirements of this article. Compliance checks shall involve the use of minors as authorized by this article. Compliance checks shall also mean the use of minors who attempt to purchase tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery devices or nicotine or lobelia delivery devices 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 tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery devices and nicotine or lobelia delivery
- (4) **Electronic Delivery Device or Electronic Cigarette** means 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 includes any component part of a product,

whether or not marketed or sold separately. Electronic delivery device does not include any product that has been approved or certified 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 marketed and sold for such an approved purpose.

- (5) **Hookah** shall mean a pipe with a long, flexible tube by which the smoke is drawn through a jar of water and thus cooled for the use of tobacco or tobacco related products.
- (6) **Individually Packaged** shall mean 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 more than a single pack or other container as described in this subdivision shall not be considered individually packaged.
- (7) **Indoor Area** shall mean 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.
- (8) **Licensing Authority** shall mean the Oakdale Administration Department.
- (9) **Loosies** shall mean the common term used to refer to a single or individual packaged cigarette or any other tobacco product that has been removed from its packaging and sold individually. The term "loosies" does not include individual cigars with a retail price, before any sales taxes, of more than \$2.00 per cigar.
- (10) **Minor** shall mean any natural person who has not yet reached the age of 18 years.
- (11) **Moveable Place of Business** shall mean any form of business operated out of a truck, van, automobile, kiosk, trailer 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.
- (12) **Nicotine or Lobelia Delivery Devices** 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 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 that approved purpose.
- (13) **Public Place** shall mean any enclosed, indoor area used by the general public, including, but not limited to, restaurants; bars; any other food or liquor establishment; retail and other commercial establishments; educational facilities; hospitals; nursing homes; auditoriums; arenas; meeting rooms; waiting rooms; and common areas of rental apartment buildings.
- (14) **Retail Establishment** shall mean any place of business where tobacco, tobacco products, tobacco related-devices, electronic cigarettes, electronic delivery devices or nicotine or lobelia delivery devices are available for sale to the general public. The phrase shall include, but not be limited to, grocery stores, convenience stores, restaurants and drug stores.

- (15) **Sale** shall mean any transfer of goods for money, trade, barter, or other consideration.
- (16) **Sampling** shall mean the lighting of tobacco, tobacco products, tobacco-related devices or the activation of and inhaling of vapor from electronic cigarettes in a retail establishment by a customer or potential customer for the purpose of sampling the product or device before a purchase.
- (17) **Self-Service Merchandising** shall mean open displays of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery devices or nicotine or lobelia delivery devices in any manner where any person shall have access to the tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices, 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 product, tobacco-related device, or nicotine or lobelia delivery device between the customer and the licensee or employee. Self-service sales are interpreted as being any sale where there is not an actual physical exchange of the product between the clerk and the customer.
- (18) **Smoking** shall mean inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product or exhaling vapor from any electronic delivery device, such as vaping. Smoking also includes carrying a lighted or heated cigar, cigarette, pipe, hookah or any other lighted or heated cigar, cigarette, pipe, hookah or any other lighted or heated tobacco plant product intended for inhalation.
- (19) **Smoking Lounge** shall mean a tobacco products shop which allows customers to be seated.
- (20) **Tobacco or Tobacco-Related Products** shall mean 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, including by vaping, or any component, part, or accessory of a tobacco product; cigars; pipe tobacco; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff, snuff flour; cavendish; shorts; plug and twist tobaccos; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweepings of tobacco; dipping tobaccos; 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.
- (21) **Tobacco Products Shop** shall mean a retail establishment with an entrance door opening directly to the outside that derives more than 90% of its gross revenue from the sale of tobacco, tobacco-related products, or tobacco-related devices and in which the sale of other products is merely incidental. "Tobacco products shop" does not include a tobacco products department or section of any individual business establishment with any type of food, liquor or restaurant license.
- (22) **Tobacco-Related Devices** shall mean any tobacco product as well as a pipe, rolling papers, ash tray, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or vaping of tobacco or tobacco products.
- (23) **Vapor Lounge** shall mean a vapor products shop which allows customers to be seated.

- (24) **Vapor Products Shop** shall mean a retail establishment with an entrance door opening directly to the outside that derives more than 90% of its gross revenue from the sale of electronic delivery devices, electronic cigarettes or related products in which the sale of other products is merely incidental. "Vapor products shop" does not include a vapor products department or section of any individual business establishment with any type of food, liquor or restaurant license.
- (25) **Vending Machine** shall mean 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.

Sec. 9-31. License.

- (1) **License Required.** No person shall sell or offer to sell any tobacco, tobacco products, tobacco-related device, electronic cigarettes, electronic delivery devices or nicotine or lobelia delivery device without first having obtained a license to do so from the city. All licenses issued under this article 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.
- (2) **Application.** An application for a license to sell tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery devices or nicotine or lobelia delivery devices shall be made on a form provided by the city and filed, along with all required fees, with the city clerk or designated licensing authority. The application shall be submitted on the city's approved form and shall contain all information that the city deems necessary. If the licensing authority determines that an application is incomplete, the application shall be returned to the applicant with notice of the information necessary to make the application complete. The investigation fee is applied to the city's costs of the background investigation of the retail establishment and all persons or entities that have at least a five percent financial interest in the retail establishment. The property must be in compliance with all applicable laws and ordinances. The police department shall conduct the background investigation before consideration by the city. All applications shall thereafter be considered and approved or denied by the city council.
- (3) **Action.** 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 additional investigation of the application or the applicant it deems necessary. If the City Council approves the license, the licensing authority 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.
- (4) **Term.** All licenses issued under this article shall expire on December 31 of each year.
- (5) **Revocations or Suspension.** Any license issued under this article may be revoked or suspended as provided in the Administrative Penalties section.
- (6) **Transfer.** All licenses issued under this article shall be valid only on the premises for which the license was issued and only for the persons to whom the license was issued. Should the

ownership of the business change at any point during the licensing period, a new application will be required.

- (7) **Moveable Place of Business.** No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible for licensing under this article.
- (8) **Display.** All licenses shall be posted and displayed at or near the primary entrance to the licensed retail establishment and in plain view of the general public on the licensed premises. In addition to the operational license, tobacco products shops must display signage at or near the primary entrance of the business directing that no person younger than 18 years of age is permitted to enter the retail establishment at any time.
- (9) **Renewals.** The renewal of a license issued under this article shall be handled 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. The issuance of a license issued under this article 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.

Sec. 9-32. Fees; Late Fees. No license shall be issued under this article until the appropriate license fee shall be paid in full. The fee for a license shall be determined by the City Council. If a renewal application is received after the given due date, a late fee, as determined by the City Council, shall be charged to the applicant. Late renewal applications shall not be processed until the late fee is paid in full. The late fee must be paid separately from the renewal application fee due to accounting purposes.

Sec. 9-33. Basis for Denial of License. Grounds for denying the issuance or renewal of a license under this article are described below. 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 upon the discovery that the person was ineligible for the license under this article. The following are grounds for denying a license or a license renewal:

- (1) The applicant is under the age of 18 years;
- (2) The applicant or any other person included on the application 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 or tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices;
- (3) The applicant or any other person included on the application has had a license to sell tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices revoked within the preceding 12 months of the date of application in this or any other jurisdiction in the United States;
- (4) The applicant or any other person included on the application has been subject to any adverse or disciplinary actions against any business license held in this or any other jurisdiction in the previous five years, regardless of whether any criminal charges were brought in connection with the alleged violation(s);

- (5) The applicant fails to provide any information required on the application, or provides false or misleading information at any stage of the application or background investigation;
- (6) The applicant or any other person included on the application is prohibited by federal, state, or other local law, ordinance, or other regulation from holding such a license;
- (7) The applicant or any other person included on the application has failed to pay any taxes or fees owed to the City of Oakdale or is in violation of Minnesota Statutes, section 270C.72; or
- (8) The applicant or any other person included on the application is determined to be not of good moral character and repute.

Sec. 9-34. Prohibitions.

- (1) **Prohibited Sales.** It shall be a violation of this article for any person to sell or offer to sell any tobacco, tobacco product, tobacco-related device, electronic cigarette, electronic delivery device or nicotine or lobelia delivery device:
 - (a) To any person under the age of 18 years;
 - (b) By means of loosies;
 - (c) 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. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other tobacco products;
 - (d) By means of any type of vending machine except when the vending machine is in a facility that cannot be entered at any time by any person under the age of 18 years;
 - (e) 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 tobacco, tobacco-related device, electronic cigarette, electronic delivery device or nicotine or lobelia delivery device and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, electronic cigarette, electronic delivery device, nicotine or lobelia delivery device between the licensee, or the licensee's employee, and the customer; or
 - (f) 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.
- (2) **Smoking and Sampling Prohibitions.** Except for the exceptions listed in Minnesota Statutes, section 144.4167, smoking generally shall be prohibited and no person shall smoke in public places and places of work, including outdoor and bar areas of restaurants. Other than provided for in Minnesota Statutes, section 144.4167, subd. 4, tobacco sampling, sampling of electronic delivery devices, and products used in electronic delivery devices, is specifically prohibited in the city. To ensure that tobacco smoke or vapor electronic delivery devices does not enter public places and places of work, and that persons entering such places are not exposed involuntarily to

smoke or vapor, smoking and the use of electronic delivery devices are prohibited within twenty-five feet of entrances, exits, open windows and ventilation intakes of public places and places of work. This prohibition does not apply to entrances and exits used solely in the event of an emergency and appropriately signed for that purpose.

- (3) **Smoking Lounges.** Smoking lounges, hookah lounges and vapor lounges are prohibited.
- (4) **Cigars.** No person shall sell, offer to sell or distribute cigars in an original package containing fewer than five cigars. The restrictions shall not apply to any sales, offer to sell, or distribution of an original package consisting of one, two, three, four, or five cigars, provided that each original package has a retail sales price of at least \$2.60 per cigar and after any price promotions or discounts are taken into account and before the imposition of sales tax, but excluding retail sales tax, and tobacco products only accessible to those 18 years or older. This section shall not apply to premium cigars as defined in Minnesota Statutes, section 297F.01, subd. 13a.

Sec. 9-35. Self-Service Sales. It shall be unlawful for a licensee under this article to allow the sale of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices by any means whereby the customer may have access to those 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 product, tobacco-related device, or nicotine or lobelia delivery device between the licensee or his or her clerk and the customer. All tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices shall either 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. A license holder who operates tobacco products shop is exempt from the self-servicing merchandising provision if the license holder prohibits anyone under 18 years of age from entering the establishment or fully enclosed portion of an establishment and the license holder conspicuously displays a notice prohibiting persons under 18 years of age from entering the establishment.

Sec. 9-36. Responsibility. All licensees under this article shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery 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 article shall be construed as prohibiting the city from also subjecting the licensee's sales clerk to whatever penalties are allowed under this article, state, or federal law, or other applicable law or regulation.

Sec. 9-37. Compliance Checks and Inspections. All licensed premises shall be open to inspection by the city police or other authorized city official during regular business hours. Pursuant to Minnesota Statutes, section 461.12, subd. 5, unannounced compliance checks shall be conducted at least once each calendar year at each location where tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are sold to test compliance. Compliance checks must involve minors over the age of 15, but under the age of 18, who, with prior written consent of a parent or guardian, attempt to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products under the direct supervision of a law enforcement officer or an employee of the licensing authority. The Oakdale Police Department will be responsible for meeting the requirements of this section. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device, or nicotine or lobelia delivery devices when such items are 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 produce any identification, if any exists, for which he or she is asked. Nothing in this article shall prohibit compliance checks authorized by state or federal laws for educational, research, or training purposes, or required for the enforcement of a particular state or federal law.

Sec. 9-38. Other Illegal Acts. Unless otherwise provided, the following acts shall be a violation of this article:

- (1) **Illegal Sales.** It shall be a violation of this article for any person to sell or otherwise provide any tobacco, tobacco product, tobacco-related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery device to any minor.
- (2) **Illegal Possession.** It shall be a violation of this article for any minor to have in his or her possession any tobacco, tobacco product, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices. This subsection shall not apply to minors lawfully involved in a compliance check.
- (3) **Illegal Use.** It shall be a violation of this article for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, tobacco-related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery device.
- (4) **Illegal Procurement.** It shall be a violation of this article for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, tobacco-related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery device, and it shall be a violation of this article 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 product, tobacco-related device, or nicotine or lobelia delivery device. This subsection shall not apply to minors lawfully involved in a compliance check.
- (5) **Use of False Identification.** It shall be a violation of this article 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.
- (6) **Persons Under the Age of 16.** It shall be a violation of this article for any person under the age of 16 to sell tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery products and a violation of this article for a licensee to cause or permit a person under the age of 16 to sell tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery products.

Sec. 9-39. Administrative Penalties; Fines Established.

- (1) **Licensees.** If a licensee, any employee of a licensee, or any other person representing the licensed premises sells tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices to a minor or violates any other

provision of this article, the licensee shall be subject to an administrative penalty. If a retail establishment has its license suspended pursuant to this article, that retail establishment shall, during the period of suspension, remove all tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices away from public view. Penalties occurring within a 24-month period will be presumed as follows:

- (a) First violation: \$75.00 fine;
- (b) Second violation: \$200.00 fine;
- (c) Third violation: \$250.00 fine and a license suspension for not less than seven days; and
- (d) Fourth violation: License revocation.

No revocation, suspension or penalty may take effect until the licensee has received notice either personally or by mail of the alleged violation and has been afforded an opportunity for a hearing pursuant to section 9-40. The administrative penalties described above are only presumed and any violation may be subject to stricter penalties when in the judgment of the City Council it is appropriate to do so. Any violation may also be subject to lesser penalties when in the judgment of the City Council it is appropriate to do so; provided, however, that in no event will the amount of any fine or period of suspension for tobacco violations be less than the amounts and periods specified in Minnesota Statutes, section 461.12, subdivisions 2 and 3, as amended. Other mandatory requirements may be made of any penalized establishment, including but not limited to, meetings with the police department staff to present a plan of action to assure that the problem will not continue, mandatory education sessions with crime prevention staff, or other actions that the City Council deems appropriate.

- (2) **Individuals.** A person who sells tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices to a minor shall be charged an administrative fine of \$50.00. No fine may be imposed until the individual has received notice, served personally or by mail, of the alleged violation and was provided an opportunity for a hearing before the City Council. A decision that a violation has occurred must be in writing.
- (3) **Fines Established.** The fines for violations as listed above may be amended from time to time by the City Council.

Sec. 9-40. Administrative Proceedings.

- (1) **Notice.** The alleged violator shall receive notice, served either personally or by mail, that sets forth the alleged violation and informs the alleged violator of his or her right to a hearing on the matter. The notice shall indicate that a hearing must be requested within 10 business days of receipt and that hearing rights shall be terminated if a hearing is not promptly requested. The notice shall provide information on how and where a hearing may be requested, including a contact address and phone number. For the purpose of a mailed notice, service shall be considered complete as of the date the notice is placed in the mail.
- (2) **Hearing.** Upon receipt of a violation notice a person accused of violating this article may request in writing a hearing on the matter. Hearing requests must be made within 10 business days of the issuance of the violation notice and delivered to the city clerk or other designated city officer. Failure to request a hearing within 10 business days of the issuance of the violation notice will terminate the person's right to a hearing. If a hearing is duly requested, the licensing authority

shall set the time and place for the hearing. Written notice of the hearing time and place shall be mailed or delivered to the accused violator at least 10 business days prior to the hearing.

- (3) **Hearing Officer.** The City Council shall serve as the hearing officer unless the City Council should determine in its sole discretion that an independent party such as an administrative law judge would better serve as a hearing officer for the case at hand.
- (4) **Decision.** If the hearing officer determines that a violation of this article did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under Section 9-39, shall be recorded in writing, a copy of which shall be provided to the accused violator by in person delivery or mail as soon as practicable. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings shall be recorded and a copy 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.
- (5) **Appeals.** Appeals of any decision made by the hearing officer shall be filed in the district court for the city in which the alleged violation occurred within 10 business days of the hearing officer's decision.
- (6) **Continued Violation.** Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.
- (7) **Costs.** If the alleged violation is upheld by the hearing officer, the city's actual expenses in holding the hearing up to a maximum of \$1,000.00 shall be paid by the person requesting the hearing

Sec. 9-41. Criminal Penalty. In addition to any administrative penalties under this article, any person, firm, or corporation violating any of the provisions of this article shall be guilty of a misdemeanor. Nothing in this article shall prohibit the city from seeking prosecution as a misdemeanor in district court for any violation of this article, or in the case of minors, referring the matter to juvenile court.

Sec. 9-42. Exceptions and Defenses. Nothing in this article shall prevent the providing of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery 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 article for a person to have reasonably relied on proof of age as described by state law.

Sec. 9-43. Severability and Savings Clause. If any section or portion of this article is held invalid, such invalidity shall not affect other sections or provisions which can be given force and effect without the invalidated section or provision. (Ord. No. 847, 07/23/19)