

Following is the Omaha ordinance that regulates the retail sales of tobacco and all other nicotine products. The Omaha City Council passed this ordinance unanimously on October 8, 2002. Mayor Mike Fahey signed it into law. It took effect on February 1, 2003.

If you have any questions or comments about this ordinance, please contact GASP of Nebraska, Inc. We would especially like to talk with citizens of other municipalities if you think your city council might be interested in learning more about this type of ordinance.

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MUNICIPAL CODE - City of OMAHA, NEBRASKA

ARTICLE VII. RETAIL SALES OF TOBACCO PRODUCTS

Sec. 12-135. Findings and intent

This city council hereby declares that it is the policy of the city to affirm the scientific evidence that the use of tobacco products is causally connected to many diseases and is dangerous to human health. It is the determination of this city council that prior legislation creating criminal penalties for the sale of tobacco products to persons under the age of 18 has proven to be an ineffectual vehicle in the prevention of sales of tobacco products to underage persons.

(Ord. No. 32972, § 1(12-125), 4-27-93)

Sec. 12-136. Definitions.

For the purpose of this article, the following terms, phrases, words and their derivations shall have the meaning given:

- (1) *Administrator* means the person who is authorized to perform the duties and responsibilities described herein, and that person shall be either the planning director or the director's designee, who shall be an employee of the planning department.
- (2) *Place of business* means a place where tobacco products are sold at retail, including vending machines.
- (3) *Responsible person* means any person, firm, association, company, partnership, or corporation or agent or employee of same who operates a store, stand, booth, concession or other place at which tobacco sales are made to purchasers. A responsible person as defined and applied herein must be an individual 18 years or older.
- (4) *Tobacco products* shall mean (1) cigarettes, (2) cigars, (3) cheroots, (4) stogies, (5) periques, (6) granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, (7) snuff, (8) snuff flour, (9) cavendish, (10) plug and twist tobacco, (11) fine cut and other chewing tobacco, (12) shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco, (13) any nicotine delivery device providing for the ingestion of nicotine into the body, and (14) anything containing tobacco or any other kinds and forms of tobacco, prepared in such manner as to be suitable for either chewing, smoking in a pipe, chewing and smoking, or inhaling and snorting through the nose.
- (5) *Vending machine* means any device or machine requiring the deposit of money or other things of value, including any such device or machine activated or operated by the vendor or by an employee or agent of the vendor.
- (6) *Vendor-assisted access* means access to tobacco, tobacco products, or other nicotine delivery devices only with the direct assistance of the vendor or a vendor employee or agent, so that customers

do not have direct access to take possession of tobacco, tobacco products or other nicotine delivery devices without direct assistance from the vendor or a vendor employee or agent.

(Ord. No. 32972, § 1(12-126), 4-27-93; Ord. No. 36062, § 1, 10-8-02)

Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 12-137. License required.

A person commits an offense if that person sells, offers for sale or displays for sale tobacco products at a place of business without having a valid tobacco dealer's license for that place of business.

(Ord. No. 32972, § 1(12-127), 4-27-93)

Sec. 12-138. Application for license.

(a) Every person wishing to sell, offer for sale or display for sale tobacco products at a place of business shall apply for a tobacco dealer's license.

(b) The application shall be on a form prescribed by the administrator.

(Ord. No. 32972, § 1(12-128), 4-27-93)

Sec. 12-139. License fee.

The license fee for a tobacco dealer's license shall be in that amount set forth in R.R.S. 1943, § 28-1423, and for each vending machine said fee shall be in that amount set forth in section 19-31(e) of this Code. The fee schedule provided herein is to be a codification of either existing state or local laws and should not be considered an additional fee; accordingly, any fees paid to and through December 31 of the year in which this article is adopted shall constitute payment of the fee schedule provided for herein.

(Ord. No. 32972, § 1(12-129), 4-27-93)

Sec. 12-140. Tobacco vending machines.

To the extent permitted by state law, tobacco vending machines are permitted only in establishments where a responsible person will be present to monitor the machine when the establishment is open. Any vending machine permissible under this article must be located in such a manner that it is well within the premises and within the range of vision of a responsible person controlling the vending machine(s) so that such person can determine the age of any person using the machine(s).

(Ord. No. 32972, § 1(12-130), 4-27-93)

Sec. 12-141. Duration of license.

A tobacco dealer's license shall be valid from and after the date upon which the license is approved through and including December 31 of the calendar year in which said license is approved.

(Ord. No. 32972, § 1(12-131), 4-27-93)

Sec. 12-142. Issuance of license.

The finance director or a designated representative of the finance director is authorized to issue a tobacco dealer's license to any person or firm making application for such, provided that only a person or firm that complies with the requirements of this article shall be entitled to receive and retain such license.

A separate license shall be required for each place of business.

(Ord. No. 32972, § 1(12-132), 4-27-93)

Sec. 12-143. Display of license.

A license issued pursuant to this article shall be prominently displayed in a publicly accessible area in the place of business. In the event the place of business is a vending machine, said license shall be displayed upon and adhered to the face of the vending machine.

(Ord. No. 32972, § 1(12-133), 4-27-93)

Sec. 12-144. Regulated sale decals.

- (a) The administrator shall cause to be placed upon every public entrance to a licensed place of business a decal as illustrated in appendix A of Ordinance No. 32972.
- (b) If a place of business is a vending machine, the decal shall be placed upon the face of the vending machine in a manner directed by the administrator.
- (c) A licensee commits a violation if the licensee fails to maintain decals placed in accordance with this section.
- (d) A person other than the administrator or the administrator's designee commits an offense if that person removes, alters or defaces a decal displayed in accordance with this section.
(Ord. No. 32972, § 1(12-134), 4-27-93)

Sec. 12-145. Certain forms of distribution prohibited.

- (a) It shall be a violation of this law to sell tobacco products in any form except original factory-wrapped packages. The sale of single cigarettes is specifically prohibited.
- (b) It shall be a violation of this law for any person or organization to give away, hand out, or otherwise distribute free samples of cigarettes or other tobacco products, or coupons that can be redeemed for free samples of cigarettes or other tobacco products, anywhere within this jurisdiction.
- (c) It shall be a violation of this law to commingle tobacco products with any other product for sale from a single vending machine.
- (d) It shall be unlawful for any person to (1) sell, permit to be sold, or offer for sale tobacco or tobacco products by means other than vendor-assisted access, or (2) display tobacco or tobacco products in a manner allowing customers access to tobacco or tobacco products without vendor assistance; provided, that this subsection (d) shall not prohibit tobacco vending machines that are duly licensed and authorized pursuant to state law and this Code. The requirements of this subsection (d) shall not apply to a separate humidor room in which no one under the age of 18 years is allowed to enter, and which bears a sign to that effect.
(Ord. No. 32972, § 1(12-135), 4-27-93; Ord. No. 36062, § 2, 10-8-02)

Sec. 12-146. Reserved.

Editor's note: Ord. No. 36062, § 3, adopted Oct. 8, 2002, repealed § 12-146 in its entirety. Formerly, said section pertained to suspension or revocation of license as enacted by Ord. No. 32972, § 1(12-136), adopted April 27, 1993.

Sec. 12-147. Reserved.

Editor's note: Ord. No. 36062, § 4, adopted Oct. 8, 2002, repealed § 12-147 in its entirety. Formerly, said section pertained to appeals as enacted by Ord. No. 32972, § 1(12-137), adopted April 27, 1993.

Sec. 12-148. Penalty and culpability.

- (a) The violation of any provision in this article shall be punished by a fine of up to \$200.00 for the first offense under such article. The violation of any provision in this article shall be punished by a fine of up to \$500.00 for each offense after the first offense. Each day any such violation shall continue, and each unlawful transaction or occurrence, shall constitute a separate offense.
- (b) There shall be no requirement of a culpable mental state for a violation of this article.
(Ord. No. 32972, § 1(12-138), 4-27-93; Ord. No. 36062, § 5, 10-8-02)

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