

CHAPTER 6 LICENSED ACTIVITIES

ORDINANCE 625 TOBACCO CONTROL

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ORDINANCE 625 TOBACCO CONTROL

Section 625.01: STATUTORY AUTHORITY AND POLICY.

Subd. 1. Statutory Authorization. This Tobacco Control Ordinance is adopted pursuant to the authorization and policies contained in Minnesota Statutes, including Minnesota Statutes, chapter 461, Minnesota Statutes, section 461.12 and section 461.19, Minnesota Statutes, section 609.685, Minnesota Statutes, section 325F.76 and section 325F.77, Minnesota Statutes, section 375.51, and successor statutes, and the policy of the State of Minnesota, set forth in Minnesota Statutes, section 144.391.

Subd. 2. Policy. Minnesota Statutes, section 144.391 is a legislative declaration of public policy relative to the promotion of nonsmoking in Minnesota. Minnesota Statutes, chapter 461 also establishes the general law restricting and regulating the manufacture and disposition of tobacco and is operative throughout the entire state. The Legislature of Minnesota has delegated authority to municipalities, to further restrict and regulate the retail sale of tobacco within its limits so long as such controls embody the substance of the general law and do not lower the standard fixed by State law. This authority to add further regulations required by local conditions is hereby recognized by the City of Kimball.

Section 625.02: GENERAL PROVISIONS.

Subd. 1. Jurisdiction. This Ordinance shall apply within the corporate limits of the City of Kimball, as provided in Minnesota Statutes, section 461.12, subdivision 1.

Subd. 2. Severability. If a court of competent jurisdiction adjudges any section, clause, provision, or portion of this Ordinance unconstitutional or invalid, the remainder of this Ordinance shall not be affected thereby.

Section 625.03: DEFINITIONS.

Subd. 1. State Law Definitions. Unless specifically defined in Subd. 2 of this Ordinance, words or phrases used in this ordinance shall have the meaning given in Minnesota Statutes, section 609.685, subdivision 1, and Minnesota Statutes, section 325F.76, and successor statutes.

Subd. 2. Other Definitions.

- A. Council. “Council” means the Kimball City Council.
- B. License. “License” means a tobacco retail sale license.
- C. Licensed Premises. “Licensed premises” means a compact and contiguous space specified in the approved tobacco retail sale license application.
- D. Moveable Place of Business. “Moveable place of business” means 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.
- E. Retail Sale. “Retail sale” means sale for any purpose other than resale in the regular course of business.

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Section 625.04: LICENSES.

Subd. 1.

- A. No person shall retail sell or offer to retail sell any tobacco without first having obtained a license to do so from the City.
- B. All licenses issued under this Ordinance shall expire on December 31 next following the date of issuance, shall not be transferable from one person to another and the fee for license shall be as set forth in the Schedule of Fees, Section 215.
- C. All licenses are effective only for the licensed premises.
- D. All licenses shall be posted and displayed in plain view of the general public on the licensed premises.
- E. Pursuant to Minnesota Statutes, section 461.15, or successor statute, no applicant for a license shall be required to pay any license fee upon furnishing a doctor's certificate showing that the applicant is blind, as defined by Laws 1937, Chapter 324.
- F. Pursuant to Minnesota Statutes, section 609.685, subd. 5, an Indian may furnish tobacco to an Indian under the age of 18 years without obtaining a license if the tobacco is furnished as part of a traditional Indian spiritual or cultural ceremony. For purposes of this paragraph, an Indian is a person who is a member of an Indian tribe as defined in Minnesota Statutes, section 260.755, subdivision 12.

Section 625.05: PERSONS INELIGIBLE.

Subd. 1. State Law Requirements. No license may be issued to a person made ineligible by State law.

Subd. 2. Restrictions in Addition to State Law.

- A. No license may be issued to a person under 18 years of age.
- B. No license may be issued to a person who has had a license issued under this Ordinance, or any ordinance of a political subdivision of this or another state in conformity with any of them, revoked within 5 years of the license application.
- C. No new license may be issued to, and the City may refuse to renew the license of, a person who, within 5 years of the license application has been convicted of a felony or a willful violation of a federal or state law or local ordinance, or a statute or ordinance from another state in conformity with any of them, governing the retail sale of tobacco.
- D. No license may be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this Ordinance.

Section 625.06: CITY AUTHORITY TO ISSUE LICENSES.

Subd. 1. Statutory City Authority to Issue Licenses. The statutory authority of the City to issue a license shall be as provided in State law.

Section 625.07: RETAIL SALES REGULATIONS.

Subd. 1. Retail Sales Regulations: State Law. Retail sales regulations shall be as provided in State law.

Subd. 2. Further Retail Sales Regulations in Addition to State Law.

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- A. Responsibility of Licensee. Every licensee is responsible for the conduct on the licensed premises and any sale of tobacco by any employee is the act of the licensee for the purposes of all provisions of this Ordinance except 625.10, Subd. 1.

Section 625.08: INSPECTIONS.

Subd. 1. State Law Requirement. The State law compliance check requirement shall be as provided in State law, and shall be conducted by the Kimball Police Department.

Subd. 2. Further Inspection Requirement in Addition to State Law. Every licensee shall allow any peace officer, health officer, or properly designated officer or employee of the City at all reasonable hours to enter in and on the licensed premises and inspect the premises and examine books, papers, and records for the purpose of determining compliance with the provisions of State law and this Ordinance.

Subd. 3. The Kimball Police Departments protocol for the tobacco compliance checks is as follows when A SALE is made to a minor:

- The Kimball Police Department will enter the establishment within two hours of the sale and inform the clerk that an illegal tobacco sale was made to the minor. The officer will have the photograph (Example: Driver License) of the buyer in case it is a requested and required form if necessary.
- The Kimball Police Department will request to speak with the store manager or owner. The officer will then inform them of the compliance check which was conducted and the penalties against the clerk and the licensee.
- The officer will request the full name and address of the clerk. The clerk, if necessary, will be ticketed with at least a \$50.00 administrative fine (according to Minnesota Law) or a higher penalty depending on the local ordinance.
- Both the clerk and the manager/owner will be informed of the penalty process.
- The Kimball Police Department Protocol for the tobacco compliance checks is as follows when NO SALE is made to the minor.
- The Kimball Police Department will deliver or mail a commendation letter to the establishment within two days of the compliance check.

Section 625.09: APPLICATION FOR LICENSES.

Subd. 1. Action

- A. Applications for licenses shall be completed as required and submitted to the Clerk Treasurer of the City.
- B. Upon receipt of the completed application for license, the Clerk Treasurer shall forward the application to the City Council for action at the next regularly scheduled meeting.
- C. If the application for license is incomplete, the Clerk Treasurer shall return the application to the applicant with notice of the information necessary to make the application complete.
- D. The City 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 applicant it deems necessary. If the City Council approves the license, the Clerk Treasurer shall issue the license to the applicant. If the City Council denies the license, the Clerk Treasurer shall give written notice of the

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denial to the applicant together with notice of the applicant's right to appeal the decision.

Section 625.10: ENFORCEMENT.

Subd. 1. Any person who violates any of the provisions of this Ordinance, or who fails or refuses to comply with the provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of \$1,000.00 or by imprisonment for 90 days, or both.

Subd. 2. In the event of a violation or threatened violation of State law or this Ordinance, the City Attorney, in addition to other remedies, may initiate appropriate civil action or proceedings to prevent, restrain, correct, or abate such violations or threatened violations, and it shall be the duty of the City Attorney to institute such action.

Subd. 3. License Suspension; Administrative Penalty

- A. Statutory Authorization. The statutory authority and procedure for the City to suspend a license or to impose an administrative penalty shall be as provided in State law.
- B. Additional Reasons for Suspension or Administrative Penalty:
- (1) The licensee knowingly allowed or permitted illegal acts unrelated to the retail sale of tobacco on the licensed premises.
 - (2) The licensee had knowledge of illegal acts unrelated to the sale of tobacco on the licensed premises, but failed to report the same to law enforcement authorities.
 - (3) The licensee had knowledge of illegal acts unrelated to the sale of tobacco on the licensed premises, but failed or refused to cooperate fully with investigating law enforcement authorities.
 - (4) The activities of the licensee or acts allowed or permitted by the licensee on the licensed premises create a serious danger to public health, safety, or welfare.
- C. The Administrative Hearing Officer, as established by Resolution of the City Council, shall be the person authorized by the City Council to conduct the hearing provided for in State law. Further administrative hearing procedures shall be established by Resolution of the City Council.

Section 625.11: EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its passage and publication according to law.

Passed by the Kimball City Council this 19th day of July, 1999.

Section 625.12: ADMINISTRATIVE PENALTIES.

LICENSEES:

- \$75.00 for first offense.
- \$200.00 for second violation at same location in 24 months of initial violation.
- \$250.00 for third violation at same location in 24 months of first and license suspension for not less than 7 days.

INDIVIDUAL:

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- \$75.00 administrative penalty.

MINORS:

- Written notification that a violation occurred.

(625.12 is an amendment which was approved by the City Council on Feb. 20, 2001)