
Ordinance No. 1432

An Ordinance to Amend and Re-enact Section 12-8-1 of the Mandan Code of Ordinances related to Tobacco Products, Definitions and to enact Section 12-8-9 related to Cigar Lounges.

BE IT ORDAINED by the Board of City Commissioners as follows:

Sec. 12-8-1. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Cigar lounge means a business dedicated, in whole or in part, to the smoking of cigars which generates fifteen percent or more of the business's annual gross income from the sale of cigars.

Compliance survey program means a program conducted by a law enforcement agency or conducted by a state agency, city, county, board of health, tobacco retailer, or association of tobacco retailers, after consultation with the appropriate local law enforcement authority, which is intended to determine whether licensed tobacco product retailers are appropriately enforcing the state law or local ordinance relating to sales of tobacco products to individuals under 21 years of age.

Distribute means to give tobacco products to the general public at no cost or at nominal cost for product promotional purposes.

Electronic cigarettes means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term "electronic cigarettes" includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, and e-pipe or under any other product, name or descriptor.

Restricted self-service means any display or stocks of tobacco products located in a distinct portion of the licensed premises which is restricted by posting conspicuous signs informing individuals under 21 years of age of the prohibited acts and penalties under this article and has such physical barricades or impediments as may reasonably be necessary for the purpose of barring the entry or presence of individuals under 21 years of age, except those individuals under 21 years of age who are employees of the licensee.

Retail tobacco dealer means any person selling, offering for sale, exposing for sale or having in possession for sale at retail, tobacco products.

Sell, besides its ordinary purposes, means and includes dispensing from a vending machine under the control of the actor.

Tobacco products means, but is not limited to, cigarettes, cigars, cigarette papers, smokeless tobacco, tobacco snuff, chewing tobacco, electronic cigarettes, and tobacco in any other form in which it may be utilized for smoking or chewing.

Vending machine means any kind of device or mechanical machine which, upon the insertion of coins, tokens, or other objects will release tobacco products in packages or otherwise.

(Code 1994, § 13-21-02; Ord. No. 913, § 1, 7-18-2000; Ord. No. 1180, § 1, 3-4-2014; Ord. No. 1391, 3-1-2022)

Sec. 12-8-2. Penalty.

Any person convicted of selling or distributing any tobacco product without having first obtained a valid license from the city or during a period of the license suspension shall be guilty of an infraction.

(Code 1994, § 13-21-06; Ord. No. 913, § 1, 7-18-2000; Ord. No. 1391, 3-1-2022)

Sec. 12-8-3. Licensee may keep book to record carding procedure of tobacco sales.

- (a) Licensees may require persons to present identification to show that person to be of legal age to purchase tobacco products. Any licensee may keep a book and may require anyone who has shown documentary proof of age, which substantiates an age to allow the purchase of tobacco products, to sign a book, if the age of that person is in question. If the licensee elects to keep a book, the book must show the date of the purchase, the identification used in making the purchase and the appropriate numbers of such identification, the address of the purchaser, the purchaser's signature and the signature of the person making the sale.
- (b) A defense may be established to an offense of sale of tobacco products to individuals under 21 years of age, if evidence is presented that:
 - (1) The purchaser falsely represented and supported with documentary proof that the purchaser was of legal age.
 - (2) The purchaser signed the book in the presence of the licensee or authorized employee or agent.

(Code 1994, § 13-21-03; Ord. No. 913, § 1, 7-18-2000; Ord. No. 1391, 3-1-2022)

Sec. 12-8-4. Employees under 21 years of age exempted.

A person under 21 years of age employed by a licensed tobacco dealer or distributor may enter a restricted self-service area and may handle tobacco products as part of his or her employment.

(Code 1994, § 13-21-04; Ord. No. 913, § 1, 7-18-2000; Ord. No. 1391, 3-1-2022)

Sec. 12-8-5. Compliance checks authorized; license suspension.

- (a) The chief of police may organize and conduct or authorize the conduct of compliance checks by other agencies, in order to ensure that tobacco product licensees, or their employees or agents, are appropriately requiring identification of persons seeking to purchase tobacco products and refusing to sell any tobacco products to individuals under 21 years of age.
- (b) Licensees who fail to successfully pass the compliance checks may be subject to suspension of their license in addition to prosecution for any violations of the city's ordinances.
- (c) Any licensee who personally or whose employees or agents sell, furnish or distribute to individual under 21 years of age any tobacco products:
 - (1) Twice within a 12-month period shall have the license suspended for five consecutive days.
 - (2) Three times within a 12-month period shall have the license suspended for ten consecutive days.
 - (3) Four times within a 12-month period shall have the license suspended for 30 consecutive days.

(Code 1994, § 13-21-05; Ord. No. 913, § 1, 7-18-2000; Ord. No. 1391, 3-1-2022)

Sec. 12-8-6. Required; application; fee.

- (a) It is unlawful to sell or distribute any tobacco products without having first secured a license from the city. The license required by this section shall also apply to sales or distribution of tobacco products through vending machines.
- (b) An applicant for a tobacco products license must file an application with the city license officer on forms provided by the city and shall attach a diagram indicating the restricted self-service areas on the premises. The term "restricted self-service area" means any display or stocks of tobacco products located in a distinct portion of the licensed premises which is restricted by posting conspicuous signs informing individuals under 21 years of age of the prohibited acts and penalties under this article and has such physical barricades or impediments as may reasonably be necessary for the purpose of barring the entry or presence of individuals under 21 years of age except those individuals under 21 years of age who are employees of the licensee.
- (c) The license fee for sale of tobacco products shall be determined by resolution of the board. The license fee for any licensee applying for an annual renewal of the tobacco products license who has not been found in violation of this article during the preceding 12 months shall be determined by resolution of the board.

(Code 1994, § 13-21-01; Ord. No. 913, § 1, 7-18-2000; Ord. No. 1391, 3-1-2022)

Sec. 12-8-7. Licensee requirements.

- (a) A licensee must limit the display, sale and distribution of tobacco products to a restricted self-service area.
- (b) A licensee, its agents and employees, are prohibited from selling or distributing tobacco products to persons under 21 years of age. A licensee shall cooperate with local law enforcement in the conduct of compliance survey program inspections.

(Code 1994, § 13-21-03; Ord. No. 913, § 1, 7-18-2000; Ord. No. 1360, 3-16-2021; Ord. No. 1391, 3-1-2022)

Sec. 12-8-8. Mobile cigar permit.

- (a) Any qualified tobacco licensee who holds a state-issued mobile tobacco license may obtain a special permit to engage in the sale of cigars permitted to be sold under the restrictions of the regular license at an event or public gathering, which is located off and away from the licensed premises and on premises designated by the permit.
- (b) For the purposes of this section, the term "qualified tobacco licensee" means a licensee who has obtained a license under this article and who has a permanent physical location in Mandan for the sale of tobacco products. The fee for the permit shall be as established by resolution. The permit shall not be valid for a period of greater than 14 consecutive days, and may include Sundays. An application for a special mobile cigar permit must be filed by the licensee with the city administrator at least seven days prior to the first day of the event. Applications must be approved by the police department and the finance department. Any application filed less than seven days prior to the first day of the event must pay a fee of double the established fee. The application shall contain the name of the licensee, the type of event for which the permit is desired, the specific location at which the event will take place, including a diagram of the area to be licensed, and the date and times for which the permit is desired. The board may establish rules to regulate and restrict the operation of the mobile cigar permit. The licensee granted a mobile cigar permit shall be responsible for compliance with all the provisions of this article and with any restrictions and special conditions placed on the mobile cigar permit by the board. Any violation of the licensing code provisions, restrictions, or special conditions may subject the licensee to immediate revocation of the mobile cigar permit and suspension or revocation of the tobacco license. Any person who dispenses, sells, or permits the use of tobacco in violation of this section or the conditions of a mobile cigar permit is guilty of a Class B misdemeanor.
- (c) Any licensee applying for a mobile cigar permit under section 12-8-8 shall make written application to the city administrator upon forms furnished by the city. The applicant shall furnish therein such information as may be required by the city administrator, including the name and address of the applicant and the date, place, and time of the proposed service.
- (d) The permit, upon issuance, shall be subject to the following restrictions:
 - (1) That the permit apply to cigars only. A cigar is defined as "any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco," as distinguished from cigarettes or other tobacco products.
 - (2) That the permit shall be effective only from 8:00 a.m. to 1:00 a.m. on the following day on each day the permit is in effect.
 - (3) That the licensee, as a condition to the issuance of such permit, consents and agrees that any city police officers may enter upon and inspect the licensed premises or any part at any time for the purpose of determining compliance with any city ordinance.
- (e) Any licensee holding a mobile cigar permit shall comply with all other applicable ordinances and laws relating to the use and sale of tobacco in the city.

(Ord. No. 1419, 12-6-2022)

Sec. 12-8-9. Cigar lounges.

- (a) Any qualified tobacco licensee who holds a state-issued certificate under N.D.C.C. § 23-12-10(3)(d) for a cigar lounge may obtain a city-issued license to operate a cigar lounge.

-
- (b) For the purposes of this section, the term "qualified tobacco licensee" means a licensee who has obtained a license under this article. The fee for the cigar lounge license shall be as established by resolution. The license shall not be valid for a period of greater than one calendar year. An application for a cigar lounge license must be accompanied by a building permit. Application must be approved by the Police, Fire, Finance, Building Inspections, Planning, and Administration departments. The application shall contain the name of the licensee, the specific location at which the cigar lounge will be located, and a diagram of the area to be licensed. The board may establish rules to regulate and restrict the operation of cigar lounges. The licensee shall be responsible for compliance with all the provisions of this article and with any restrictions and special conditions placed on cigar lounges by the Board of City Commissioners. Any violation of the licensing code provisions, restrictions, or special conditions may subject the licensee to immediate revocation of the cigar lounge license and suspension or revocation of the tobacco license. Any person who dispenses, sells, or permits the use of tobacco in violation of this section or the conditions of a cigar lounge license is guilty of a Class B misdemeanor.
- (c) Any licensee applying for a cigar lounge license under this section shall make written application to the city administrator upon forms furnished by the city. The applicant shall furnish therein such information as may be required by the city administrator, including the name and address of the applicant, location to be licensed, and other information as required.
- (d) The license, upon issuance, shall be subject to the following restrictions:
- (1) That the license apply to cigars only. A cigar is defined as an individual roll of tobacco which has a wrapper or cover of whole leaf tobacco; does not contain filler other than tobacco filler; does not contain binder other than tobacco binder; does not contain additives other than water; does not contain a filter, tip, or nontobacco mouthpiece; weighs at least six pounds per thousand count; and is made by hand, except to allow for the use of a manually operated machine to assist in bunching, rolling, and binding.
 - (2) Cigar lounges that intend to sell and allow consumption of alcoholic beverages must obtain the applicable liquor license for the type of alcoholic beverages planned to be sold, and must continue to meet the definition of "cigar lounge" as set forth in section 12-8-1.
 - (3) Cigar lounges must adhere to all relevant building, fire, and food and beverage codes. A license will be issued only upon documenting compliance with applicable codes or submitting plans to the pertinent department/entity outlining the measures to achieve conformance.
 - (4) Cigar lounges may be opened and operated in zoning districts which permit bars. No license shall be issued to cover any location within 300 feet of the property line of property whereon is located any school, state-licensed childcare facility, church, public or parochial school, public library, hospital, clinic or medical facility, college, or university building used for academic purposes, unless any entities affected by the above limitation consent to the issuance of the license in writing. Applicants shall not be issued licenses to operate in a mixed-use commercial building without consent of affected entities provided in writing. Licenses shall not be issued for mixed-use buildings containing residential dwellings.
 - (5) Cigar lounges shall conspicuously post signage referencing the minimum age to consume tobacco products and public health messaging.
 - (6) That the licensee, as a condition to the issuance of such license, consents and agrees that any city police officers may enter upon and inspect the licensed premises or any part at any time for the purpose of determining compliance with minimum age and product requirements and any other city ordinance.
- (e) Any licensee holding a cigar lounge license shall comply with all other applicable ordinances and laws relating to the use and sale of tobacco in the city.

By: 
Tim Helbling, President, Board of City Commissioners

Attest:


James Neubauer, City Administrator

First Consideration: 9/5/23
Second Consideration and Final Passage: 9/19/23
Publication: _____