



# CITY OF FALCON HEIGHTS

2077 W Larpenteur Ave  
Falcon Heights MN 55113  
Phone 651-792-7600. Fax 651-792-7610  
[www.falconheights.org](http://www.falconheights.org)

| FOR OFFICE USE  |
|-----------------|
| License Number: |
| Approval Date:  |
| Amount Paid:    |
| Receipt:        |

## Tobacco License Application Form

**Fee: \$250**

Application is hereby made for a **TOBACCO LICENSE** for the period of January 1 to December 31 of the calendar year, for which the sum of \$250.00 is tendered.

License in the name of: \_\_\_\_\_

For the premises located at: \_\_\_\_\_

Owner/Manager: \_\_\_\_\_

Telephone: Business \_\_\_\_\_ Residence: \_\_\_\_\_

Home Address: \_\_\_\_\_

Minnesota Tax ID Number: \_\_\_\_\_

Federal Tax ID Number: \_\_\_\_\_

Owner's Social Security Number: \_\_\_\_\_

### ITEMS REQUIRED FOR LICENSURE:

- *Completed application*
- *Compliance with Ordinance Article IX. Tobacco Section 14.292 regulating tobacco related products.*
- *Check made payable to City of Falcon Heights for the license fee*

***I make this application with the understanding that any licenses issued hereunder shall be subject to the restrictions and regulation of the municipal code of Falcon Heights, Minnesota.***

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Date

## **City Code of Falcon Heights, Minnesota**

### **Chapter 14 - Businesses**

#### **ARTICLE VIII - TOBACCO<sup>5</sup>**

##### ***Sec. 14-292 - Purpose and intent***

Because marketing and public health research and tobacco industry documents reveal that tobacco companies have used fruit, candy, and alcohol flavors as a way to target youth and young adults and that the presence of flavors such as menthol in tobacco products can make it more difficult for youth, young adult, and adult tobacco users to quit; and

The city further recognizes that young people are particularly susceptible to the addictive properties of tobacco products, and are particularly likely to become lifelong users. National data show that about 95 percent of adult smokers begin smoking before they turn 21. The ages of 18 to 21 are a critical period when many smokers move from experimental smoking to regular, daily use.

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 shall be intended to regulate the sale of tobacco, tobacco-related devices, electronic cigarettes, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect youth and young adults against the serious effects associated with the illegal use of tobacco, tobacco products, tobacco-related devices, and electronic delivery devices, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in Minn. Stats. § 144.391, as it may be amended from time to time.

(Ord. No. 12-01, § 1, 3-14-2012; Ord. No. 14-01, § 1, 1-22-2014; Ord. No. 18-03, § 2, 5-9-2018)

**Editor's note** – Ord. No. 12-01, § 1, adopted March 14, 2012, amended § 14-292 in its entirety to read as set out herein. Former § 14-292 pertained to definitions and derived from the Code of 1993, § 5-1.03(D)(2); Ord. No. 99-01, § 1, adopted Jan. 3, 1999.

##### ***Sec. 14-293 - Definitions***

Except as may otherwise be 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:

*Child-resistant packaging* means 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, as in effect on January 1, 2015.

*Cigar* means any roll of tobacco that is wrapped in tobacco leaf or in any other substance containing tobacco, with or without a tip or mouthpiece, which is not a cigarette as defined in Minn. Stat. § 297F.01, subd. 3, as may be amended from time to time.

*Compliance checks* means the system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco-related devices, and electronic delivery devices are following and complying with the requirements of this article. Compliance checks shall involve the use of persons under the age of 21 as authorized by this article. Compliance checks shall also mean the use of persons under the age of 21 who attempt to purchase tobacco, tobacco products, tobacco-related devices, or electronic 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, and electronic delivery devices.

*Electronic delivery device* means any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption through the inhalation of aerosol or vapor from the product. Electronic delivery device includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems, or under any other product name or descriptor. 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.

*Flavored tobacco product* means any tobacco, tobacco products, tobacco-related device, or electronic delivery device that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the product, including, but not limited to, any taste or smell relating to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, fruit, or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by a manufacturer of tobacco or tobacco related devices, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such products, that a product has or produces a taste or smell other than tobacco will constitute presumptive evidence that the product is a flavored product.

*Individually packaged* means 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 definition shall not be considered individually packaged.

*Indoor area* means 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.

*Loosies* means the common term used to refer to a single or individually-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.

*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 storefront or other permanent type of structure authorized for sales transactions.

*Person* means any natural person, partnership, firm, joint stock company, corporation, or other legal entity, including an employee of a legal entity.

*Retail establishment* means any place of business where tobacco, tobacco products, tobacco-related devices, or electronic 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.

*Sale* means any transfer of goods for money, trade, barter or other consideration.

*Self-service merchandising* means open displays of tobacco, tobacco products, tobacco-related devices, or electronic delivery devices in any manner where any person shall have access to the tobacco, tobacco products, tobacco-related devices, or electronic 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 electronic 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.

*Smoking* means inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product. Smoking also includes carrying a lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation. "Smoking" also includes the use of an electronic delivery device.

*Tobacco or tobacco products* means tobacco and tobacco products includes 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; 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.

*Tobacco-related devices* include any tobacco product as well as a pipe, rolling papers, ashtray, 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. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately.

*Vending machine* means 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.

(Ord. No. 12-01, § 2, 3-14-2012; Ord. No. 14-01, §§ 1, 2, 1-22-2014; Ord. No. 18-03, § 3, 5-9-2018)

**Editor's note** – Ord. No. 12-01, § 2, adopted March 14, 2012, amended § 14-293 in its entirety to read as set out herein. Former § 14-293 pertained to license required and derived from the Code of 1993, § 5-1.03(D)(3); Ord. No. 99-01, § 1, adopted Jan. 3, 1999.

## ***Sec. 14-294 - License***

- (a) *License required.* No person shall sell or offer to sell any tobacco, tobacco products, tobacco-related device, or electronic delivery device without first having obtained a license to do so from the city.
- (b) *Application.* An application for a license to sell tobacco, tobacco products, tobacco-related devices, or electronic 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 city council 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.
- (c) *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 investigation of the application or the 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 city council's decision.
- (d) *Term.* The license is effective from January 1 to December 31 of each year.
- (e) *Revocation or suspension.* Any license issued under this section may be revoked or suspended as provided in section 14-297.
- (f) *Transfers.* 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 without the prior approval of the city council.
- (g) *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 section.
- (h) *Display.* All licenses shall be posted and displayed in plain view of the general public on the licensed premise.
- (i) *Renewals.* The renewal of a license issued under this section shall be handled in the same manner as the original application.
- (j) *Issuance as a privilege and not a right.* The issuance of a license issued under this section 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.
- (k) *Smoking.* Smoking shall not be permitted and no person shall smoke within the indoor area of any retail establishment with a tobacco license. Smoking for the purposes of sampling tobacco and tobacco related products is prohibited.
- (l) *Sale by person under the age of 18.* It shall be unlawful for any business licensed under this article to allow any person under the age of 18 years to sell, offer for sale, or attempt to sell tobacco, tobacco products, tobacco-related devices, or electronic delivery devices.
- (m) *Age verification.* Licensees must verify by means of government-issued photographic identification that the purchaser is at least 21 years of age. Verification is not required for a

person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.

- (n) *Signage.* Notice of the legal sales age and age verification requirement must be posted at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the city, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.

(Ord. No. 12-01, § 3, 3-14-2012; Ord. No. 14-01, §§ 1, 3, 1-22-2014; Ord. No. 18-03, § 3, 5-9-2018)

**Editor's note** – Ord. No. 12-01, § 3, adopted March 14, 2012, amended § 14-294 in its entirety to read as set out herein. Former § 14-294 pertained to license shall be displayed and derived from the Code of 1993, § 5-1.03(D)(4); Ord. No. 99-01, § 1, adopted Jan. 3, 1999.

### ***Sec. 14-295 - License restrictions***

It shall be a violation of this article for any person to sell or offer to sell any tobacco, tobacco product, tobacco-related device, or electronic delivery device:

- (1) To any person under the age of 21 years.
- (2) By means of any type of vending machine.
- (3) 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 product, tobacco-related device, or electronic delivery device and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, or electronic delivery device between the licensee, or the licensee's employee, and the customer.
- (4) By means of loosies as defined in section 14-293.
- (5) 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.
- (6) In the form of liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device, in packaging that is not child-resistant. Upon request, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.
- (7) By any other means, to any other person, on in any other manner or form prohibited by federal, state or other local law, ordinance provision, or other regulation.
- (8) It shall be a violation of this article for any person to sell or offer to sell any flavored tobacco product. This prohibition on the sale of flavored tobacco products does not apply to retail establishments that:
  - a. Prohibit persons under 21 years of age from entering at all times; and
  - b. Derive at least 90 percent of their revenues from the sale of any tobacco, tobacco products, tobacco-related devices, or electronic delivery devices.

- c. Any retail establishment that sells flavored tobacco products must provide upon request financial records that document annual sales.

(Code 1993, § 5-1.03(D)(5); Ord. No. 99-01, § 1, 1-3-1999; Ord. No. 12-01, § 4, 3-14-2012; Ord. No. 14-01, § 1, 1-22-2014; Ord. No. 18-03, § 3, 5-9-2018)

**State Law reference** – Sale of tobacco to minors, Minn. Stats. § 609.685.

***Sec. 14-296 - Compliance checks***

- (a) Open to inspection. All licensed premises shall be open to inspection by the city police or other authorized city officials during regular business hours.
- (b) Annual compliance checks. From time to time, but at least twice per year, the city shall conduct compliance checks. One check will be conducted by engaging, with the written consent of their parents or guardians, a person over the age of 15 years but less than 17 years of age, to enter the licensed premise to attempt to purchase tobacco, tobacco products, tobacco-related devices, or electronic cigarettes. A second check will be conducted by engaging a person over the age of 18 but less than 21 years of age, to enter the licensed premise to attempt to purchase tobacco, tobacco products, tobacco-related devices, or electronic cigarettes.
- (c) Persons under the age of 21 used for the purpose of compliance checks shall be supervised by city designated law enforcement officers or other designated city personnel. No person under the age of 21 used in compliance checks shall attempt to use a false identification misrepresenting the person's age, and all persons under the age of 21 lawfully engaged in a compliance check shall answer all questions about their person'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 section 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.

(Code 1993, § 5-1.03(D)(6); Ord. No. 99-01, § 1, 1-3-1999; Ord. No. 18-03, § 3, 5-9-2018)

**State Law reference** – Compliance checks, Minn. Stats. § 461.128, subd. 5.

***Sec. 14-297 - Violations and penalties***

- (a) *Generally.* The license holder shall be responsible for the conduct of its agents or employees while on the licensed premises. Any violation of this article shall be considered an act of the license holder for purposes of imposing a civil penalty, license suspension, or revocation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.
- (b) *Notice of violation.* Upon the occurrence of a suspected violation, the police department shall inform the city administrator of the suspected violation. The city administrator shall then send to the license holder a written notice of the civil violation. The notice shall advise the license holder of the penalty and the license holder's right to request a hearing regarding the violation of this article.

- (c) *Administrative civil penalties; licensee:* Each license issued hereunder shall be subject to suspension or revocation for violation of any provisions of this chapter or the laws of the State of Minnesota as follows:
- (1) *First violation:* The first violation of this chapter shall be punishable by a civil penalty of \$500.00.
  - (2) *Second violation:* A second violation of this chapter within any twenty-four-month period shall be punishable by a civil penalty of \$750.00.
  - (3) *Subsequent violation:* A third or subsequent violation of this chapter within any twenty-four-month period shall be punishable by revocation of the license plus a civil penalty of \$250.00. Any licensee whose license is revoked under this section shall not be eligible for renewal for a period of two years after the revocation.
- (d) *Administrative civil penalties; individuals:* An individual who sells tobacco to a person under the age of 21 years shall pay an administrative penalty of \$50.00.
- (e) *Hearing:* Following receipt of a notice of a violation and penalty issued under this section, the license holder or individual may agree to the presumptive penalty or request a hearing before the city council. A request for a hearing shall be made by the individual or license holder in writing and filed with the city administrator or designee within ten days of the mailing of the notice of the alleged violation. Following receipt of a written request for hearing, the individual or license holder shall be afforded an opportunity for a hearing before the council.
- (f) *Findings:* If after the hearing the license holder or individual is found in violation of this chapter, the council shall impose the presumptive penalty.
- (g) *Default:* If the individual or license holder has been provided written notice of the violation and if no request for a hearing is filed within the ten-day period, then the presumptive civil penalty, suspension or revocation imposed in this chapter shall take immediate effect by default. The city administrator or designee shall mail notice of the fine, suspension or revocation to the individual or license holder.

(Code 1993, § 5-1.03(D)(7); Ord. No. 99-01, § 1, 1-3-1999; Ord. No. 10-02, § 1, 1-27-2010; Ord. No. 18-03, § 3, 5-9-2018)

#### ***Sec. 14-298 - Affirmative defense***

It is an affirmative defense to charges under this article if the license holder proves by a preponderance of the evidence that the license holder reasonably and in good faith relied on proof of age as described in Minn. Stats. § 340A.503, subd. 6 in making the sale.

(Code 1993, § 5-1.03(D)(9); Ord. No. 99-01, § 1, 1-3-1999)