

CHAPTER 5-11 TOBACCO

5-11-01. Purpose. The City of Bismarck has recognized that illegal tobacco purchase and use by minors is a significant problem within the city. This section is intended to reduce the illegal purchases of tobacco products by minors and to reduce the accessibility of tobacco products to minors.
(Ord. 5017, 11-23-99)

5-11-02. Authority to Sell. No person, firm, business or other entity may directly or indirectly or by means of device, offer or dispose of or give away any tobacco product, including but not limited to, cigarettes, cigarette papers, cigars, chew, snuff, tobacco or an electronic smoking device without:

1. A North Dakota State Tobacco Dealers License issued pursuant to NDCC Chapter 57-36.
2. The authority to sell tobacco products at retail as granted by the City of Bismarck.

An employee acting on behalf of his/her employer, shall have the same license and authority with regard to tobacco products as the employer. As used in this chapter, "tobacco" or "tobacco product" are defined as any product that contains tobacco, is derived from tobacco or contains nicotine or other similar substances, that is intended for human consumption, or is likely to be consumed, whether smoked, heated, inhaled, chewed, absorbed, dissolved, or ingested by another means. The term "Tobacco Product" includes E-cigarettes and other electronic smoking devices, pipes and rolling papers, but does not include any product approved by the United States Food and Drug Administration for legal sale as a tobacco cessation product and is being marketed and sold solely for the approved purpose. For the purposes of this Chapter, "Electronic smoking device" means any electronic product or oral device, such as one composed of a heating element, battery or electronic circuit, or both, that delivers nicotine or other substances to the individual inhaling from the device, including, an electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of such a product, whether or not sold separately. Electronic smoking device does not include drugs, devices, or combination products approved for sale by the United States Food and Drug Administration, as those terms are defined in the federal Food, Drug and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.]. A "person or business" means any individual, business, firm, fiduciary, partnership, corporation, limited liability company, trust, or association however formed.
(Ord. 5017, 11-23-99; Ord. 6164, 10-27-15)

5-11-03. Grant of Authority. The City of Bismarck does hereby grant the authority to sell tobacco products or electronic smoking devices at retail, to persons or businesses who have a North Dakota State Tobacco Dealers License under NDCC Chapter 57-36. The authority to sell granted by this section may be suspended or revoked as provided in this chapter. No mobile vendor, person or business may sell or deliver tobacco products from a mobile vendor vehicle or a push cart, as defined in Chapter 10-05.1, or from a motor vehicle or trailer, or from any other temporary facility moved from place to place to conduct sales.

(Ord. 5017, 11-23-99; Ord. 6164, 10-27-15; Ord. 6285, 9-26-17)

5-11-04. Violations. A fine may be imposed on a person or business engaged in the sale of tobacco products or electronic smoking devices at retail when any employee of the person or business is convicted of a violation of City Ordinance 6-07-01(1).

1. Hearing. A violation of this section shall be civil in nature and the Municipal Court is granted the authority to hear cases under this section. Upon notification of a violation of this section the City shall file a complaint with the Municipal Court. Upon the filing of the complaint, the Court shall notify the person or business of the complaint and of the time and place of a hearing to be held concerning the matter. The notice shall specify the reason for the hearing, the time and place for the hearing and the right of the person or business to appear at the hearing. The notice must be mailed to the person or business at least ten days prior to the hearing. A record of the hearing shall be made by electronic recording device. The City shall establish a violation or violations of this section by offering certified copies of relevant judgments of conviction from the Municipal Court and the Municipal Court may take judicial notice of these records.

2. Defenses. A person or business charged with a violation of this section who is a member participant in good standing of Compliance Plus or other Commission approved compliance program may assert such membership as an affirmative defense and upon proof of membership in good standing be entitled to a dismissal of the complaint. This affirmative defense may be asserted only one time for each license or location. This affirmative defense shall be for only those violations occurring within one year from the effective date of this section.

3. If after the hearing the Municipal Judge finds that the violation charged has occurred as proven by a preponderance of the evidence, the Municipal Judge may assess a fine of up to \$1000. The Municipal Court may suspend all or part of any fine imposed upon a showing by the person or business that it has attempted to train its employees on the prevention of the sale of tobacco products and electronic smoking devices to persons under 21 years of age. The Municipal Court shall issue its Findings and Order which shall be served on the person or business. The decision of the Municipal Court shall be final.

(Ord. 5017, 11-23-99; Ord. 5157, 02-26-02; Ord. 6164, 10-27-15; Ord. 6406, 02-01-20)

5-11-05. Grounds for Suspension or Revocation of Authority to Sell. The authority to sell tobacco products or electronic smoking devices granted by this Chapter may be revoked or suspended temporarily by the Board of City Commissioners if the person or business violates Section 5-11-04 more than one time at any one location and the illegal sales by the clerks employed by the person or business upon which the violations of Section 5-11-04 are based occurred within a 24 month period.

1. Hearing for Revocation or Suspension. Before the authority to sell tobacco products or electronic smoking devices may be revoked or suspended for cause, the Board shall notify the person or business of the proposed action and the right to a hearing on the action. The notice shall specify the action proposed to be taken, the reason for it, the time and place of the hearing, and the right of the person or business to appear and present evidence or testimony on it's behalf. The notice must be mailed to the person or business by certified return receipt mail not less than five days nor more than fifteen days before the hearing.

2. If after the hearing the Board of City Commissioners finds that the violations did occur, the Board may give a warning, suspend the authority to sell, or revoke the authority to sell as it deems appropriate. The Board shall issue Findings of Fact, Conclusions and Order, which shall be served on the person or business. The decision of the Board is final.

(Ord. 5017, 11-23-99; Ord. 6164, 10-27-15)