

CHAPTER 35

SALE OF TOBACCO PRODUCTS

Article

- 35-01 Authority for the Sale of Tobacco Products, §§ 35-0101 to 35-0105.
35-02 Sale of Tobacco Without Authority Prohibited, §§ 35-0201 to 35-0202.

ARTICLE 35-01

AUTHORITY FOR THE SALE OF TOBACCO PRODUCTS

Section

- 35-0101 Definitions.
35-0102 Authority to sell tobacco.
35-0103 Suspension of authority to sell tobacco products.
35-0104 Burden of proof.
35-0105 Hearing for suspension.

35-0101. Definitions.--As used in this chapter, unless the context or subject matter otherwise requires:

1. "Cigar" means any roll of tobacco wrapped in tobacco.
2. "Cigarette" means any roll for smoking made wholly or in part of tobacco, and encased in any material except tobacco.
3. "Other tobacco products" means any product except cigarettes, cigarette papers, cigars, or snuff which is made up or composed of tobacco, in whole or in part.
4. "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability company, trust, or association however formed.
5. "Probationary period" is defined as a period of 12 months for a violation which is not within any period of probation already established by a violation of any of this article, which 12 months shall be defined as commencing on the date of the said first offense and shall extend for 12 consecutive months thereafter. If any subsequent offenses occur within the said 12-month period the probationary period for any such subsequent offense shall extend for either the same 12 consecutive months from the date of the first offense, as described above, or for a period of six months from the date of the subsequent offense, whichever period would expire later. For purposes of this article, an offense is deemed to have occurred when the offense is committed, and not the date of judgment or conviction.
6. "Sale" or "sell" applies to gifts, exchanges, and barter.
7. "Tobacco" means cigarettes, cigarette papers, snuff, and cigars.

Source: 2777 (1996).

35-0102. Authority to sell tobacco.--The city of Fargo does hereby grant the authority to sell at retail tobacco or other tobacco products within the city to persons who have a state license as required under chapter 57-36 of the North Dakota Century Code.

Source: 2777 (1996).

35-0103. Suspension of authority to sell tobacco products.--The authority granted under this chapter shall be suspended for violation of § 10-0103 of the Fargo Municipal Code or North Dakota Century Code §12.1-31-03 prohibiting the sale of tobacco and other tobacco products to minors, or for a violation of the provisions of this chapter, as follows:

- A. First offense -- Warning: A warning shall be given by the court that the authority to sell shall be suspended if subsequent offense occurs within the probationary period.
- B. Second offense -- Three-day suspension: In the event of a second offense within the probationary period, the court shall suspend the person's authority to sell tobacco and tobacco products for a period of three days.
- C. Third offense -- Ten-day suspension: In the event of a third offense within the probationary period the court shall suspend the person's authority to sell tobacco and tobacco products for a period of 10 days.
- D. Subsequent offenses -- Thirty-day suspension: In the event of an offense occurring after a third offense within the probationary period the court shall suspend the person's authority to sell tobacco and tobacco products for a period of 30 days.
- E. Offenses during periods of suspension. In the event an offense is committed by a person while that person's authority to sell tobacco or other tobacco products is under suspension, the authority granted in this article shall be suspended for a full probationary period.
- F. One offense per 24 hours. For purposes of establishing the number of offenses committed by a person who has been granted the authority to sell tobacco or tobacco products a person is deemed to have committed only one offense during any 24-hour period.

Source: 2777 (1996).

35-0104. Burden of proof.--A violation of the provisions of this article shall be a noncriminal administrative proceeding in which the city of Fargo shall have the burden of proving a violation of this ordinance by a preponderance of the evidence.

Source: 2777 (1996).

35-0105. Hearing for suspension.--The authority granted under the provisions of this article may not be suspended without a public hearing. In the event that the commission, or a person or committee so designated by separate resolution, intends to consider the suspension of the authority granted in this article, the person whose authority is sought to be suspended shall be notified of the commission's intention to consider the same. The notice shall specify the time and place of the suspension hearing, shall describe the reason for said hearing, and shall be served upon the person whose authority is sought to be suspended in the same manner as provided by law for the service of a summons in a civil action. No suspension hearing shall be held before the expiration of 15 days after the date of the service of the notice. The hearing for said suspension shall be heard by the municipal court judge. A record of the hearing shall be made by electronic recording device.

If, upon such hearing, it appears to the municipal court judge that sufficient cause exists for the suspension of the authority granted pursuant to this article, the municipal court judge shall make its order suspending the said authority in accordance with the provisions of this article. The municipal court judge shall issue its findings, conclusions and order which shall be served on the person whose authority is thereby suspended. The order is appealable pursuant to chapter 28-34 of the North Dakota Century Code.

Source: 2777 (1996).

ARTICLE 35-02

SALE OF TOBACCO WITHOUT AUTHORITY PROHIBITED

Section

35-0201 Sale without authority prohibited.

35-0202 Separate offense for each day.

35-0201. Sale without authority prohibited.--No person shall, directly or indirectly or by means of device, offer or dispose of, or give away, or cause to be offered or exposed for sale, exchanged, bartered, disposed of, or given away, tobacco or other tobacco products at any price in the city without the authority granted to that person by the city of Fargo under § 35-0102 of the Fargo Municipal Code.

Source: 2777 (1996).

35-0202. Separate offense for each day.--Each day any person shall violate § 35-0201 of the Fargo Municipal Code shall constitute a separate infraction or offense.

Source: 2777 (1996).