

ORDINANCE NO. 9782

AN ORDINANCE AMENDING THE REGULATION OF TOBACCO PRODUCTS SOLD AND CONSUMED IN THE CITY OF PUEBLO; REQUIRING A TOBACCO RETAILER LICENSE FOR THE SALE OF CIGARETTES; PROHIBITING THE SALE AND FURNISHING OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF TWENTY-ONE YEARS; ELIMINATING CRIMINAL PENALTIES FOR UNDERAGE POSSESSION OR PURCHASE OF TOBACCO PRODUCTS; AND EXPANDING THE CONSIDERATION PERIOD FOR PRESUMPTIVE PENALTIES FOR VIOLATION OF THE RETAIL TOBACCO REGULATIONS

WHEREAS, the City of Pueblo has promulgated rules and regulations governing the sale and use of tobacco products within the City; and

WHEREAS, State and Federal Regulations governing the sale and use of tobacco products have changed in recent years; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that: (brackets indicate matter being deleted, underscoring indicates new matter being added)

SECTION 1.

Chapter 15, of Title IX of the Pueblo Municipal Code is amended to read as follows:
CHAPTER 15 - Licensing of **[Non-Cigarette]** Tobacco Retailers

Sec. 9-15-1. - Incorporation of general licensing provisions.

The provisions of Chapter 1, Title IX, Pueblo Municipal Code, shall apply to this Chapter except where they are specifically modified by the provisions of this Chapter.

Sec. 9-15-2. - Definitions.

The following definitions shall apply throughout this Chapter:

(1) **Cigar means any roll of tobacco other than a Cigarette wrapped entirely or in part in tobacco or any other substance containing tobacco. For purposes herein, cigar includes, but is not limited to tobacco products known or labeled as a “cigar,” “cigarillo,” or “little cigar.”**

(2) **Cigarette** means any product that contains tobacco or nicotine, that is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

- a. Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

b. Tobacco in any form that is functional in the product which, because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to or purchased by consumers as a cigarette; or

c. Any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by *Cigarette* means any product that contains tobacco or nicotine, that is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

a. Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

b. Tobacco in any form that is functional in the product which, because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to or purchased by consumers as a cigarette; or

c. Any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette described in Subparagraph (1)a. above.

d. The term includes all "roll-your-own," i.e., any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes. *Cigarette* means any product that contains tobacco or nicotine, that is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

a. Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

b. Tobacco in any form that is functional in the product which, because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to or purchased by consumers as a cigarette; or

c. Any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette described in Subparagraph (1)a. above.

[(2)](3) *City License Officer* or *License Officer* means the City Clerk.

(4) Electronic Smoking Device means any product containing or delivering nicotine intended for human consumption that can be used by an individual to simulate smoking in the delivery of nicotine or any other substance, even if marketed as nicotine-free, through inhalation from the product. Electronic

smoking device includes any refill, cartridge, or component part of a product, whether or not marketed or sold separately. Electronic smoking 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 or for other medically approved or certified purposes.

[(3)](5) *Department* means the City of Pueblo Police Department, and any agency or person designated by the Mayor or Chief of Police to enforce or administer the provisions of this Chapter.

[(4)](6) *Licensee* means the owner or holder of a [non-cigarette] tobacco product retailer license.

[(5)](7) *License* refers to the [non-cigarette] tobacco product retailer license.

[(6)] *Minor* means any natural person who is under eighteen (18) years of age.]

(8) Tobacco paraphernalia means all equipment, products and materials of any kind which are used, intended for use or designed for use in ingesting, inhaling, or otherwise introducing into the human body a tobacco product.

[(7)](9) [Non-cigarette t] *Tobacco product* includes:

[(1)](a) any product[, other than a cigarette,] that contains tobacco or nicotine or is made or derived from tobacco that is intended for human consumption or [expected] is likely to be consumed, ingested, smoked, inhaled, placed in oral or nasal cavities, or applied to the skin of an individual, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; or

[(2)](b) any [electronic] device that can be used to deliver nicotine or tobacco to the person using the device, including but not limited to an electronic cigarette, cigar, cigarillo or pipe; or

(c) any component, part, accessory or associated Tobacco Paraphernalia of a Tobacco Product whether sold separately or not.

(d) The term [non-cigarette] tobacco product does not include

a. any product specifically approved by the United States Food and Drug Administration for use in reducing, treating or eliminating nicotine or tobacco dependence, or for other medical purposes, when such product is being marketed and sold solely for such an approved purpose; or

b. any product that contains marijuana.

[(8)](10) *[Non-cigarette tobacco product retail location or retail location]***Licensed Premises** means any premises where **[non-cigarette]**tobacco products are sold or distributed to a consumer, including but not limited to hookah bar, lounge or café, any grounds occupied by a retailer, any store, stand, outlet, vehicle, cart, location, vending machine or structure where **[non-cigarette]**tobacco products are sold.

[(9)](11) *[Non-cigarette t]***Tobacco product retailer** means any person who sells, offers for sale, or **[does or]**offers to exchange for any form of consideration, a **[non-cigarette]**tobacco product.

[(10)](12) *[Non-cigarette t]***Tobacco product retailing** means the selling, offering for sale or exchanging for any form of consideration a **[non-cigarette]**tobacco product.

[(11)](13) *Self-service display* means the open display or storage of **[non-cigarette]**tobacco products in a manner that is physically accessible in any way to the general public without the assistance of the **[retailer]****Licensee** or employee of the **[retailer]****Licensee** **[and]****through** a direct person-to-person transfer between the **[purchaser]****Recipient** and the **[retailer]****Licensee** or employee of the **[retailer]****Licensee**. A vending machine is a form of self-service display.

[(12)](14) *Vending machine* shall mean any mechanical, electrical or electronic self-service device which, upon insertion of money, tokens or any other form of payment, dispenses product.

Sec. 9-15-3. - Time.

In calculating any period of time prescribed or allowed under this Chapter, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, even if it is a Saturday, Sunday, or a legal holiday, unless the prescribed time period is ten (10) days or less.

Sec. 9-15-4. - License requirements and prohibitions.

(a) **[Non-cigarette t]****Tobacco product retailer license required.**

(1) It shall be unlawful and a Class 1 municipal offense for any person to act as a **[non-cigarette]**tobacco product retailer in the City of Pueblo unless he or she has obtained a **[non-cigarette]**tobacco **retailer** license and maintains the same in full force and effect pursuant to this Chapter for each location where **[non-cigarette]**tobacco product retailing occurs.

(2) No license may be issued to authorize ~~[non-cigarette]~~tobacco product retailing anywhere other than at a fixed location that is designated in the license application and approved by the Licensing Officer. ~~[Non-cigarette t]~~Tobacco product retailing by persons anywhere other than a licensed premises or on foot or from vehicles is ~~[prohibited]~~a class 1 municipal offense.

(3) ~~[Non-cigarette t]~~Tobacco retailing without a valid ~~[non-cigarette]~~tobacco product retailer license is a nuisance as a matter of law.

(b) Display of license. Each ~~[non-cigarette]~~tobacco product retailer license shall be prominently displayed in a publicly visible location at the licensed ~~[non-cigarette tobacco product retail location]~~premises.

(c) Other prohibitions.

(1) A ~~[non-cigarette tobacco product retail location]~~licensed premises may only have one (1) active license at one time. Every license is separate and distinct and specific to a designated location. The license cannot be assigned, delegated, sold, inherited, or otherwise transferred between persons or transferred to a different location, except as provided in this Chapter. No licensee shall exercise the privileges of any other license or delegate the privileges of its own license.

(2) A person or entity may not apply for a license for ~~[a non-cigarette tobacco product retail for]~~a one-year period after that person or entity's tobacco retailer [a]license has been revoked.

(3) No license shall be issued to any person under ~~[eighteen (18)]~~twenty-one (21) years of age.

Sec. 9-15-5. - Conditions of ~~[non-cigarette]~~tobacco product retailer license.

The following conditions shall apply to the licensee:

(1) Minimum age for persons handling and selling ~~[non-cigarette]~~tobacco products.

a. No person younger than eighteen (18) years of age while employed at a ~~[non-cigarette tobacco product retail location]~~licensed premises shall sell, stock, retrieve or otherwise handle ~~[non-cigarette]~~tobacco products.

(2) Minimum Sales Age. Tobacco products shall not be given, sold, distributed, dispensed, or offered for sale, to any person under twenty-one (21) years of age.

[(2)](3) Prohibition of self-service displays. Licensees shall stock and display all **[non-cigarette]**tobacco products in a manner so as to make all such products inaccessible to customers without the assistance of a retail clerk, thereby requiring a direct face-to-face exchange of the **[non-cigarette]**tobacco product from an employee of the business to the customer; provided, however, this Paragraph (2) shall not apply to a licensee who is a retail tobacco store as defined in Paragraph 7-6-3(15) of the Pueblo Municipal Code and**[/or]** the licensee ensures that the premises are not open, or accessible to persons under **[eighteen (18)] twenty-one (21)** years of age.

[(3)](4) Requirements of positive identification. No person engaged in **[non-cigarette]**tobacco product retailing shall sell or transfer a **[non-cigarette]** tobacco product to another person **[who appears to be under the age of thirty (30) years]**without first examining the identification of the recipient to confirm that the recipient is at least **[eighteen (18)]twenty-one (21)** years of age.

Sec. 9-15-6. - Application procedure.

(a) An application for a license shall be submitted and signed by an individual authorized by the person or entity making application for the license. It is the responsibility of each applicant and/or licensee to be informed regarding all laws **and regulations** applicable to tobacco retailing, including those laws affecting the issuance of said license. No applicant and/or licensee may rely on the issuance of a license as a determination by the City that the proprietor has complied with all applicable tobacco retailing laws.

(b) All applications shall be submitted on a form supplied by the Licensing Officer.

(c) A licensed **[non-cigarette]**tobacco product retailer shall inform the Licensing Officer in writing of any change in the information submitted on an application for a license within thirty (30) business days of a change.

(d) All license applications shall be accompanied by the payment in full of all fees as required in this Chapter.

Sec. 9-15-7. - Issuance of **[non-cigarette]tobacco product license.**

(a) Upon the receipt of a completed application for a **[non-cigarette]**tobacco product retailer license as required by this Chapter, the Licensing Officer shall sign and issue a license within thirty (30) days, which period may be extended by the Licensing Officer for good cause, unless substantial evidence demonstrates that one (1) or more of the following bases for denial exists:

- (1) The information presented in the application is incomplete, inaccurate or false;
- (2) The applicant seeks authorization for a license at a location where this Chapter prohibits the issuance of a license;
- (3) The applicant seeks a license for a location that is not appropriately zoned for the use;
- (4) The applicant seeks authorization for a license and the applicant's current license is suspended or revoked;
- (5) The applicant is not qualified to hold the requested license under the provisions of this Chapter;
- (6) The applicant and/or [retail location]licensed premises is not in compliance with all City, state or federal laws;
- (7) The applicant is indebted to or obligated in any manner to the City for unpaid taxes, liens, or other monies; or
- (8) The payment of the licensing fee in the full amount chargeable for such license does not accompany such license application.

Sec. 9-15-8. - Denial of [non-cigarette]tobacco product license.

- (a) If the Licensing Officer denies the issuance of the license, the Licensing Officer shall notify the applicant in writing by regular mail postage prepaid on the address shown in the application. The notice shall include the grounds for denial. Notice is deemed to have been properly given upon mailing.
- (b) An applicant has the right to appeal the Licensing Officer's denial of an application to a "Hearing Officer" that shall be appointed by the Mayor. Such an appeal shall be initiated by filing a written request with the Licensing Officer within twenty (20) days of the date of the notice of denial of the issuance of a license.
- (c) The applicant's failure to timely appeal the decision of the Licensing Officer is a waiver of the applicant's right to contest the denial of the issuance of the license.
- (d) The appeal, including any right to further appeals, shall be conducted and controlled by the provisions of Chapter 7 of Title I of the Pueblo Municipal Code. The standard of proof at such appeal shall be a preponderance of the evidence, and the burden of proof shall be upon the applicant.

Sec. 9-15-9. - License term, renewal, and expiration.

(a) Term. All **tobacco product retailer** licenses issued under this Code shall be for the period of one (1) year or a fraction thereof and shall expire on the last day of December of each calendar year unless otherwise specifically provided.

(b) Renewal of license. A licensee shall apply for the renewal of the license and submit the renewal license fee no later than thirty (30) days prior to expiration of the existing term. The Licensing Officer shall renew the license prior to the end of the term, provided that the renewal application and fee were timely submitted and the Licensing Officer is not aware of any fact that would have prevented issuance of the original license or issuance of the renewal.

(c) Expiration of license. A license that is not timely renewed shall expire at the end of its term. The failure to timely obtain a renewal of a license requires submission of a new application. There shall be no sale of any [non-cigarette]tobacco products after the license expiration date and before the new license is issued.

Sec. 9-15-10. - License nontransferable.

(a) A license shall not be transferred from one (1) person to another or from one (1) location to another.

(b) When a license has been issued to a husband and wife or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new license for the remainder of the term of that license. All rights and privileges granted under the original license shall continue in full force and effect as to such survivors for the balance of the term of the license.

Sec. 9-15-11. - Fee for license.

The annual fee for original issuance and renewal of a [non-cigarette]tobacco product retailer license shall be one hundred dollars (\$100). The fee to issue or to renew a license may be changed from time to time by resolution of the City Council. The fee shall be calculated so as to recover the cost of administration and enforcement of this Chapter, including, for example, issuing a license, administering the license program, retailer education and training, retailer inspection, compliance checks, documentation of violations and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this Chapter. Fees are nonrefundable except as may be required by law. **No fee previously paid by a Licensee in connection with the application shall be refunded if such License is suspended or revoked.**

Sec. 9-15-12. - Compliance monitoring.

(a) Compliance monitoring of this Chapter shall be by the Department, as the Department deems appropriate.

(b) The Department shall have discretion to consider previous compliance check history of a licensee in determining how frequently to conduct compliance checks of the licensee with respect to individual licensees.

(c) Nothing in this Section shall create a right of action in any licensee or other person against the City, the Department or their agents and officers.

(d) Compliance checks shall be conducted as the Department deems appropriate so as to allow the Department to determine, at a minimum, if the [non-cigarette]tobacco product retailer is conducting business in a manner that complies with laws regulating access to [non-cigarette]tobacco products. When the Department deems appropriate, the compliance checks shall determine compliance with other laws applicable to [non-cigarette]tobacco products.

(e) The Department shall not enforce any law establishing a minimum age for tobacco purchases or possession against a person who otherwise might be in violation of such law because of the person's age (hereinafter "youth decoy") if the potential violation occurs when:

(1) The youth decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the Department; or

(2) The youth decoy is acting as an agent of a person designated by the City to monitor compliance with this Chapter; or

(3) The youth decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the Pueblo [City-County Health] Department of Public Health and Environment or the Colorado Department of Public Health and Environment.

Sec. 9-15-13. - Suspension or revocation of license.

(a) The following shall be grounds for suspension or revocation of the licensee's license:

(1) A violation by a licensee or licensee's officers, agents, or employees of any of the provisions of this Chapter, or any laws of the United States, the State of Colorado, or ordinances of the City of Pueblo relating to the sale or furnishing of tobacco or cigarettes to [minors]persons under the age of twenty-one (21), or the storage or display of cigarettes or tobacco products.

(2) Violations of any conditions imposed by the Licensing Officer or Hearing Officer in connection with the issuance or renewal of a license.

(3) Failure to pay state or local taxes that are related to the operation of the business associated with the license.

(4) Loss of right to possession of the licensed premises.

(5) Fraud, misrepresentation, or a false statement of material fact contained in the original or renewal license application.

(6) Any violation of any of the requirements of this Chapter relating to Tobacco product retailing.

(b) The Mayor shall appoint a Hearing Officer to hear all actions relating to the suspension or revocation of licenses pursuant to this Chapter. The Hearing Officer shall have the authority to suspend, revoke or impose remedial sanctions for violations.

(c) The Licensing Officer shall commence suspension or revocation proceedings by petitioning the Hearing Officer to issue an order to the licensee to show cause why the licensee's license should not be suspended or revoked. The Hearing Officer shall issue such an order to show cause if the petition demonstrates that probable cause exists to determine that one (1) or more grounds exist pursuant to Subsection (a) above to suspend or revoke the licensee's license. The order to show cause shall set the matter for a public hearing before the Hearing Officer.

(d) Notice of the order to show cause and hearing date shall be mailed to licensee by regular mail, postage prepaid, at the address shown on the license no later than thirty (30) days prior to the hearing date. Notice is deemed to have been properly given upon mailing.

(e) The notice to show cause hearing and any subsequent right to appeal shall be conducted and controlled by the provisions of Chapter 7 of Title I of the Pueblo Municipal Code. The standard of proof at such hearings shall be a preponderance of the evidence, and the burden of proof shall be upon the Licensing Officer and/or Department.

(f) In determining whether a license should be suspended or revoked, and in determining whether to impose conditions in the event of a suspension, the Hearing Officer shall consider the following factors:

- (1) The nature and circumstances of the violation;
- (2) Corrective action, if any, taken by the licensee;
- (3) Prior violations, if any, by the licensee;
- (4) The likelihood of recurrence of the violation;
- (5) Whether the violation was willful; and
- (6) Previous sanctions, if any, imposed on the licensee.

(g) Every licensee whose license has been suspended by the Hearing Officer shall post two notices in conspicuous places, one on the exterior and one on the interior of its premises, for the duration of the suspension. The notices shall be two feet in length and fourteen inches in width containing lettering not less than ½ inch in height, and shall be in the following form:

NOTICE OF SUSPENSION:
TOBACCO PRODUCT RETAIL LICENSE ISSUED FOR
THESE PREMISES HAVE BEEN SUSPENDED BY ORDER
OF THE LOCAL LICENSING AUTHORITY FOR
VIOLATION OF THE PUEBLO MUNICIPAL CODE

- (1) **Failure to post the signs required by this subsection (g) shall be a violation of this Code subject to further disciplinary action against the License and/or Licensee.**
- (2) **Advertising or posting signs to the effect that the premises have been closed or business suspended for any reason other than by order of the department suspending alcohol beverage license, shall be a violation of this Code subject to further disciplinary action against the License and/or Licensee.**

Sec. 9-15-14. - Penalties and fines.

(a) Licensees: penalties and fines. In addition to any other penalty authorized by law, and if the Hearing Officer determines based on a preponderance of the evidence that the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions or prohibitions of this Chapter, or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law relating to the sale of tobacco to **[minors]persons under the age of twenty-one (21)**, including but not limited to Sections 18-13-121 and 24-35-503, C.R.S., the Hearing Officer may consider the following non-binding guidelines in determining the sanctions to be imposed upon a licensee as follows:

(1) One (1) violation within **[one (1) year]three (3) years**: a civil penalty of **[one]three** hundred dollars **[(\$100)](\$300)**.

(2) Two (2) violations within **[one (1) year]three (3) years**: a civil penalty of **[two]six** hundred dollars **[(\$200)](\$600)** and suspension of the license for seven (7) days.

(3) Three (3) violations within **[one (1) year]three (3) years**: a civil penalty of **[three]nine** hundred dollars **[(\$300)](\$900)** and a minimum **[twenty (20)]thirty (30)** days suspension of the license.

(4) Four (4) violations within **[one (1) year]three (3) years**: a civil penalty of **[five hundred]one thousand** dollars **[(\$500)](\$1,000)** and revocation of **the** license.

The actual sanction imposed upon a licensee for any violation may vary from the above-stated guidelines when warranted by the specific facts and circumstances of the case.

(b) After the effective date of this ordinance, it shall be unlawful and a Class 1 municipal offense for any [non-cigarette]tobacco product retailer to sell a [non-cigarette]tobacco product without a license as mandated under this Chapter, or with a suspended or revoked license. In addition, the Hearing Officer may impose civil penalties of up to \$500 for each separate [non-cigarette]tobacco product sold during the period of noncompliance with this Chapter.

Sec. 9-15-15. - Enforcement.

(a) The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity. In addition to other remedies provided by this Chapter or by other law, any violation of this Chapter may be remedied by a civil action brought by the City Attorney, including but not limited to nuisance abatement proceedings and injunctive relief.

(b) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall cause the offender to be subject to the penalty provisions of Chapter 1 of Title XI of this Code.

Sec. 9-15-16. – Compliance with Section 39-22-623, C.R.S.

This Chapter is not nor shall not be construed in any way as [imposing a fee, license or tax as a condition for engaging in the business of selling cigarettes or]imposing a tax on any person as a condition for engaging in the business of selling cigarettes. [The non-cigarette tobacco product retailer license in no way applies to the sale of cigarettes.]If any part of this Chapter is found to impose a [fee, license or]tax as a condition for engaging in the business of selling cigarettes, then that part shall be deemed void.

Sec. 9-15-17. - No rights in license.

Every license issued under this Chapter confers only a limited and conditional privilege subject to the requirements, conditions, limitations, and qualifications of this Chapter. The license does not confer a property right of any kind. The license and privilege created by the license may be further regulated, limited, or completely extinguished at the discretion of City Council or the electorate of the City, as provided in this Chapter, without any compensation to the licensee. Nothing contained in this Chapter grants to any licensee any vested right to continue operating under the provisions of this Chapter as they existed at the time the license was approved or issued, and every license shall be subject to any ordinance or prohibition adopted after the license was approved or issued.

Sec. 9-15-18. – Distance from Schools

(a) The License Officer shall not approve a Tobacco Products Retail License Application for a new retail location if the new retail location is located within five hundred feet of a school. The distance between the new retail location and the school is measured from the nearest property line of land used for school purposes to the nearest portion of the licensed premises using a route of direct pedestrian access.

(1) This subsection (a) does not apply to retail locations at which tobacco products were sold before the effective date of this subsection (a).

(2) If a licensed premise that was in existence as of the effective date of this subsection (a) is transferred to a new owner after the effective date of this subsection (a), the new owner need not comply with this subsection (a)

(b) As used in this section “school” shall have the same meaning as set forth in Colorado Revised Statute 44-3-103(50).

Section 9-15-19 – Signage requirements

(a) The owner, operator, manager, or other person who controls licensed premises shall display a warning sign as specified in this Subsection. The warning sign shall be displayed in a prominent place in the retail tobacco store at all times, shall have a minimum height of three (3) inches and a width of six (6) inches, and shall read as follows:

WARNING

IT IS ILLEGAL TO SELL CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS TO ANY PERSON UNDER TWENTY-ONE YEARS OF AGE. STATE LAW REQUIRES THAT, TO PURCHASE CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS AT THIS RETAIL LOCATION, A PERSON MUST PRESENT A VALID GOVERNMENT-ISSUED PHOTOGRAPHIC IDENTIFICATION AT THE TIME OF PURCHASE IF THE PERSON APPEARS TO BE UNDER FIFTY YEARS OF AGE.

(b) The owner, operator, manager, or other person who controls a licensed premises shall display a sign as specified in this Subsection. The sign shall be displayed in a prominent place in the retail tobacco store at all times, shall have a minimum height of three (3) inches and a width of six (6) inches, and shall read as follows:

SURGEON GENERAL'S WARNING

SMOKING CAN CAUSE LUNG CANCER, HEART DISEASE, EMPHYSEMA, AND MAY COMPLICATE PREGNANCY.

Section 9-16-20 – Effective date.

This Chapter shall become effective on March 1, 2013, and enforceable on and after that date. This date shall be the effective date. Any [non-cigarette]tobacco product retailer without a license after the effective date will be in violation of this Chapter.

SECTION 2.

Section 208, of Chapter 1, of Title XI of the Pueblo Municipal Code is amended to read as follows:

Sec. 11-1-208. - Tobacco vending machines.

(a) It shall be unlawful for any person to sell or dispense cigarettes or other tobacco products through a vending machine or other coin-operated machine, or to possess or maintain any vending machine or other coin-operated machine containing cigarettes or other tobacco products within the City except[

(1) **]in an age-restricted area of a licensed gaming establishment as defined in section 44-30-103(18)**[On premises licensed under the Colorado Liquor Code or Colorado Beer Code for on-premises consumption of alcoholic beverages or fermented malt beverages;

(2) Within private residences or private clubs

(3) On other premises which are not legally open or generally accessible to persons under the age of eighteen (18) years].

(b) **Nothing in this section is intended to allow any person to sell or dispense tobacco products without holding a license as required in Chapter 15, of Title IX of this Code.**

(c) Violation of any provision of this Section shall be a Class 2 municipal offense.

[(c) Nothing contained in this Section shall be construed to permit the purchase, sale or furnishing of cigarettes or other tobacco products by or to any person under the age of eighteen (18) years.]

SECTION 3.

Section 209, of Chapter 11, of Title XI of the Pueblo Municipal Code is amended to read as follows:

Sec. 11-1-209. - Sale, possession and use of tobacco products.

(a) Definitions. As used in this Section:

(1) *Minor* means any natural person who is under eighteen (18) years of age.] **Retail tobacco store means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.**

(2) *Tobacco product* means:

a. Any product that contains nicotine or tobacco or is derived from tobacco and is intended to be ingested, inhaled, smoked, placed in the oral or nasal cavities, or applied to the skin of an individual, including but not limited to, cigarettes, cigars, cigarillos, kreteks, bidis, hookah, and pipes; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff and snuff flour, snus, plug and twist, fine-cut, and other chewing or dipping tobacco; shorts, refuse scraps, clippings, cuttings, and seepings of tobacco; and any other kinds and forms of tobacco, prepared in such manner as to be suitable for both chewing or for smoking in a cigarette, pipe, or otherwise, or both for chewing and smoking. "Tobacco product" also includes cloves and any other plant matter or product that is packaged for smoking; or

b. Any electronic device or any component thereof that can be used to deliver nicotine to the person inhaling from the device, including but not limited to, an electronic cigarette, cigar, cigarillo, hookah, pipe, or nicotine vaporizer; and nicotine or other chemical liquids, extracts, and oils intended to be used therein.

c. Notwithstanding any provision of paragraph a. of this Subsection (2) to the contrary, "tobacco product" does not mean any product that the food and drug administration of the United States department of health and human services has approved as a tobacco use cessation product.

(b) It shall be rebuttably presumed that the substance within a package or container is a tobacco product if the package or container has affixed to it a label which identifies the package or container as containing a tobacco product.

(c) It shall be unlawful and a Class 2 municipal offense for any person to knowingly furnish to any **[minor]person under the age of twenty-one (21) years**, by gift, sale or any other means, any tobacco product. It shall be an affirmative defense to a prosecution under this subsection that the person furnishing the tobacco product was presented with and reasonably relied upon a document which identified the **[minor]person** receiving the tobacco product as being **[eighteen (18)]twenty-one (21)** years of age or older.

(d) No person younger than eighteen (18) years of age while employed at any retail or wholesale commercial enterprise shall sell, stock, retrieve or otherwise handle tobacco products in connection with such minor's assigned job duties or otherwise.

(e) Notwithstanding the provisions of this Section, it shall be unlawful and a Class 2 municipal offense for a person under ~~eighteen (18)~~**twenty-one (21)** years of age to be admitted to or be on the premises of, when such premises is open for business, a retail tobacco store ~~[as defined in Section 7-6-3(15) of this Code]~~ or a ~~[non-cigarette tobacco product retail location]~~**licensed premises** as defined in Section 9-15-2~~[(8)]~~**(10)** of this Code utilized primarily for the sale of ~~[non-cigarette]~~tobacco products and accessories and in which the sale of other products is merely incidental.

~~[(h)]~~ The owner, operator, manager, or other person who controls a retail tobacco store shall display a warning sign as specified in this Subsection. The warning sign shall be displayed in a prominent place in the retail tobacco store at all times, shall have a minimum height of three (3) inches and a width of six (6) inches, and shall read as follows:

WARNING
IT IS ILLEGAL FOR ANY PERSON UNDER EIGHTEEN YEARS OF
AGE TO BE ON THE PREMISES OF THIS RETAIL TOBACCO STORE
AND, UPON CONVICTION, A \$300.00 FINE MAY BE IMPOSED

(i) The owner, operator, manager, or other person who controls a retail tobacco store shall display a sign as specified in this Subsection. The sign shall be displayed in a prominent place in the retail tobacco store at all times, shall have a minimum height of three (3) inches and a width of six (6) inches, and shall read as follows:

SURGEON GENERAL'S WARNING
SMOKING CAN CAUSE LUNG CANCER, HEART DISEASE, EMPHYSEMA, AND
MAY COMPLICATE PREGNANCY.]

SECTION 4.

The officers and staff of the City are authorized and directed to perform any and all acts consistent with the intent of this Ordinance to effectuate the policies and procedures described herein.


SECTION 5.

This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on August 24, 2020.

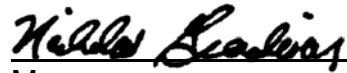
Final adoption of Ordinance by City Council on September 28, 2020.



President of City Council

Action by the Mayor:

- ☒ Approved on September 30, 2020.
- ☐ Disapproved on _____ based on the following objections:



Mayor

Action by City Council After Disapproval by the Mayor:

- ☐ Council did not act to override the Mayor's veto.
- ☐ Ordinance re-adopted on a vote of _____, on _____
- ☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST



City Clerk