

AN ORDINANCE TO AMEND AND REENACT SECTION 27-5 OF THE CODE OF THE CITY OF LYNCHBURG, 1981, THE AMENDED SECTION RELATING TO THE POSSESSION TO TOBACCO PRODUCTS, NICOTINE VAPOR PRODUCTS, AND ALTERNATIVE NICOTINE VAPOR PRODUCTS BY PERSONS UNDER 21 YEARS OF AGE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That Section 27-5 of the Code of the City of Lynchburg, 1981, be and the same is hereby amended and reenacted as follows:

Sec. 27-5. – Prohibiting the purchase, possession or sale of tobacco products, by minors nicotine vapor products, and alternative nicotine products by a person under 21 years of age.

~~(a) No person shall sell to, distribute to, purchase for or knowing permit the purchase by any person less than 21 years of age, knowing or having reason to believe that such person is less than 21 years of age, any tobacco product, nicotine vapor product, or alternative nicotine product. 18 years of age, knowing or having reason to believe that such person is less than 18 years of age, any tobacco product, including but not limited to cigarettes and cigars. No tobacco product may be sold from a vending machine (i) except in compliance with subsection (e) and (ii) unless notice is posted on the machine in a conspicuous manner and place indicating that the purchase or possession of tobacco products by minors is unlawful.~~

Tobacco products, nicotine vapor products, and alternative nicotine products may be sold from a vending machine only if the machine is (i) posted with a notice, in a conspicuous manner and place, indicating that the purchase or possession of tobacco products by persons under 21 years of age is unlawful and (ii) located in a place that is not open to the general public and is not generally accessible to persons under 21 years of age. An establishment that prohibits the presence of persons under 21 years of age unless accompanied by a person 21 years of age or older is not open to the general public.

~~(b) No person less than 21 years of age shall attempt to purchase, purchase, or possess any tobacco product, nicotine vapor product, or alternative nicotine product. The provisions of this subsection shall not be applicable to the possession of tobacco products, nicotine vapor products, or alternative nicotine products by a person less than 21 years of age making a delivery of tobacco products, nicotine vapor products, or alternative nicotine products in pursuance of his employment. This subsection shall not apply to purchase, attempt to purchase, or possession by a law-enforcement officer or his agent when the same is necessary in the performance of his duties. 18 years of age shall purchase or possess any tobacco product including but not limited to cigarettes or cigars. The provisions of this subsection shall not be applicable to the possession of tobacco products by a person less than 18 years of age making a delivery of tobacco products in pursuit of his employment.~~

~~(c) No person shall sell a tobacco product, nicotine vapor product, or alternative nicotine product to any individual who does not demonstrate, by producing a driver's license or similar photo identification issued by a government agency, that the individual is at least 21 years of age. Such identification is not required from an individual whom the person has reason to believe is at least 21 years of age or who the person knows is at least 21 years of age. Proof that the person demanded, was shown, and reasonably relied upon a photo identification stating that the individual was at least 21 years of age shall be a defense to any action brought under this subsection. In determining whether a person had reason to believe an individual is at least 21 years of age, the trier of fact may consider, but is not limited to, proof of the general appearance, facial characteristics, behavior, and manner of the individual. sell or distribute a tobacco product to any individual who does not demonstrate by producing a driver's license or similar photo identification issued by a government agency, that the individual is at least 18 years of age. Such identification is not required from an individual whom the person has reason to believe is at least 18 years of age or whom the person knows is at least 18 years of age. This subsection shall not apply to mail order sales.~~

This subsection shall not apply to mail order or Internet sales, provided that the person offering the tobacco product, nicotine vapor product, or alternative nicotine product for sale through mail order or the Internet (i) prior to the sale of the tobacco product, nicotine vapor product, or alternative nicotine product verifies that the purchaser is at least 21 years of age through a commercially available database that is regularly used by businesses or governmental entities for the purpose of age and identity verification and (ii) uses a method of mailing, shipping, or delivery that requires the signature of a person at least 21 years of age before the tobacco product, nicotine vapor product, or alternative nicotine product will be released to the purchaser.

(d) The provisions of subsections (b) and (c) shall not apply to the sale, giving, or furnishing of any tobacco product, nicotine vapor product, or alternative nicotine product to any active duty military personnel who are 18 years of age or older. An identification card issued by the Armed Forces of the United States shall be accepted as proof of age for this purpose.

(de) A violation of subsection (a), (b), or (c) by an individual or by a separate retail establishment that involves a nicotine vapor product, alternative nicotine product, or tobacco product other than a bidi is punishable by a civil penalty in the amount of \$100 for a first violation, a civil penalty in the amount of \$200 for a second violation, and a civil penalty in the amount of \$500 for a third or subsequent violation. shall be punishable by a civil penalty not to exceed \$50.00 for a first violation and a civil penalty not to exceed \$100.00 for a second violation. However, a third or subsequent violation of subsection (a) shall be punishable by a civil penalty not to exceed \$250.00. A third or subsequent violation of subsection (b) shall be punishable by a civil penalty not to exceed \$100.00 and the judge in his discretion may enter an order pursuant to subdivision 9 of Section 16.2-278.8 of the Code of Virginia.

A violation of subsection (a) or (c) by an individual or by a separate retail establishment that involves a nicotine vapor product, alternative nicotine product, or tobacco product other than a bidi is punishable by a civil penalty in the amount of \$500 for a first violation, a civil penalty in the amount of \$1,000 for a second violation, and a civil penalty in the amount of \$2,500 for a third or subsequent violation. Where a defendant retail establishment offers proof that it has trained its employees concerning the requirements of this section, the court shall suspend all of the penalties imposed hereunder. However, where the court finds that a retail establishment has failed to so train its employees, the court may impose a civil penalty not to exceed \$1,000 in lieu of any penalties imposed hereunder for a violation of subsection (a) or (c) involving a nicotine vapor product, alternative nicotine product, or tobacco product other than a bidi.

A violation of subsection (b) is punishable by a civil penalty not to exceed \$100 for a first violation and a civil penalty not to exceed \$250 for a second or subsequent violation. A court may, as an alternative to the civil penalty, and upon motion of the defendant, prescribe the performance of up to 20 hours of community service for a first violation of subsection B and up to 40 hours of community service for a second or subsequent violation. If the defendant fails or refuses to complete the community service as prescribed, the court may impose the civil penalty. Upon a violation of subsection (b), the judge may enter a delinquency order pursuant to subdivision A 9 of Section 16.1-278.8 of the Virginia Code.

The commonwealth's attorney may bring an action to recover the civil penalty, which shall be paid into the city treasury. Any law enforcement officer may issue a summons for a violation of subsection (a), (b), or (c)

(ef) (1) Cigarettes shall only be sold in sealed packages provided by the manufacturer, with the required health warning. The proprietor of every retail establishment which offers for sale any tobacco product, nicotine vapor product, or alternative nicotine product including but not limited to cigarettes and cigars, shall post in a conspicuous manner and place a sign or signs indicating that the sale of tobacco products to any person under 21 years of age is prohibited by law. A violation of this subsection shall be punishable by a civil penalty not to exceed \$100 \$50.00. No filing fee or other fee or cost shall be charged to the city when instituting an action under this subsection.

(2) No person shall operate a vending machine which dispenses tobacco products unless such a machine is located in:

(i) A place that is not open to the general public and is not generally accessible to minors; or

~~(ii) A place that is open to the general public. Such a vending machine shall be inside the establishment and unless the vending machine is at least ten feet from any public entrance to the establishment, or the sale of a token is required to operate such a machine, it shall be placed within the normal unobstructed line of sight of the proprietor or his employees.~~

~~(3) A violation of this subsection shall be punishable by a civil penalty not to exceed \$100.00. No filing fee or other fee or cost shall be charged to the city when instituting an action under this subsection.~~

(fg) Nothing in this section shall be construed to create a private cause of action.

(h) As used in this section:

"Alternative nicotine product" means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. "Alternative nicotine product" does not include any nicotine vapor product, tobacco product, or product regulated as a drug or device by the U.S. Food and Drug Administration (FDA) under Chapter V (21 U.S.C. Section 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

"Bidi" means a product containing tobacco that is wrapped in temburni leaf (diospyros melanoxylon) or tendu leaf (diospyros exculpra), or any other product that is offered to, or purchased by, consumers as a bidi or beedie.

"Nicotine vapor product" means any noncombustible product containing nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form. "Nicotine vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. "Nicotine vapor product" does not include any product regulated by the FDA under Chapter V (21 U.S.C. Section 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

"Tobacco product" means any product made of tobacco and includes cigarettes, cigars, smokeless tobacco, pipe tobacco, bidis, and wrappings. "Tobacco product" does not include any nicotine vapor product, alternative nicotine product, or product that is regulated by the FDA under Chapter V (21 U.S.C. Section 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

"Wrappings" includes papers made or sold for covering or rolling tobacco or other materials for smoking in a manner similar to a cigarette or cigar.

2. That this ordinance shall become effective upon its adoption.

Adopted: June 23, 2020

Certified: _____ Clerk of Council