

ORDINANCE NO. 1760

**AN ORDINANCE REPEALING AND REORDAINING SECTION 9.04.070
(FURNISHING CIGARETTES OR TOBACCO PRODUCTS TO MINORS –SALE OF
CIGARETTES OR TOBACCO PRODUCTS IN VENDING MACHINES- PURCHASE
OF CIGARETTES OR TOBACCO PRODUCTS BY MINORS) OF CHAPTER 9.40
(OFFENSES BY OR AGAINST MINORS) OF TITLE 9 (PUBLIC PEACE, MORALS
AND WELFARE) OF THE FOUNTAIN MUNICIPAL CODE BY INCREASING THE
AGE OF MINORS FROM 18 TO 21**

RECITALS

A. Section 6.2 of the Home Rule Charter of the City of Fountain, Colorado provides that to those legislative enactments which are of a permanent nature shall be by ordinance; and

B. The City of Fountain recognizes the dangers associated with youth access to tobacco products; and

C. Research shows that most adult smokers began using tobacco products before reaching the legal age at which they could purchase tobacco products; and

D. Regulating the sale of tobacco products is appropriate to protect the health, safety, and welfare of young people in Fountain; and

E. The requirement of retail sellers of tobacco products to comply with the foregoing regulations will not unduly burden legitimate business activities of retailers who sell tobacco products to adults.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FOUNTAIN, COLORADO:

Section 1. The above recitals are incorporated by reference in this Ordinance and such recitals constitute findings in support of this Ordinance.

Section 2. Section 9.40.070 (Furnishing Cigarettes or Tobacco Products to Minors- Sale of Cigarettes or Tobacco Products in Vending machines – Purchase of Cigarettes or Tobacco Products by Minors) of Chapter 9.40 (“Offenses by or Against Minors”) of Title 16 (Public Peace, Morals and Welfare) of the Fountain Municipal Code is hereby amended to read as follows:

“9.04.070 Furnishing Cigarettes or Tobacco Products to Minors – Sale of Cigarettes or Tobacco Products to Minors – Sale of Cigarettes or Tobacco Products in Vending Machines – Purchase of Cigarettes or Tobacco Products by Minors.

A. “Tobacco Product” and any other relevant term shall be defined as set forth in Section 5.36 “Tobacco Product Retail Licensing” of the Fountain Municipal Code.

B. It shall be unlawful for any person to sell, give, deliver or furnish tobacco products to any person who is under twenty-one years of age.

C. It shall be unlawful for any person who is the owner, operator, clerk or person in charge of a store or business wherein is installed an automatic vending machine or other coin-operated machine for tobacco products to permit any person under the age of twenty-one to use such machines or procure therefrom any tobacco products.

D. It shall be unlawful for any person who is under twenty-one years of age to purchase any tobacco products.

E. It shall be unlawful for any person who is under twenty-one years of age to consume or use any tobacco product. To consume or use a tobacco product shall mean for purposes of this paragraph, to smoke, ingest, absorb, inhale or chew any tobacco product.

F. It shall be unlawful for any person who is under eighteen years of age to sell, stock, retrieve, or otherwise handle tobacco products. No employer or person with supervisory authority over a person under eighteen years of age shall direct such person to sell, stock, retrieve, or otherwise handle tobacco products in the course of his or her employment.

G. No person shall sell or transfer a tobacco product to another person who appears to be under the age of thirty years without first examining the identification of the recipient to confirm that the recipient is at least twenty-one years of age.

H. No person younger than eighteen years of age shall be admitted to or be within the premises of a retail tobacco business unless accompanied by his or her parent or guardian. A retail tobacco business means a sole proprietorship, corporation, limited liability company, partnership, or other enterprise engaged primarily in the sale, manufacture, or promotion of tobacco, tobacco products, or smoking devices or accessories, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is not less than five percent (5%) gross sales receipts. For purposes of enforcement of this paragraph, a retail tobacco business includes, but is not limited to, a sole proprietorship, corporation, limited liability company or other enterprise engaged primary in the sale or manufacture of hookah or shisha products and related smoking products, including but not limited to, any plant or other organic matter packaged for smoking or held out as a smoking product, or any sole proprietorship, corporation, limited liability company, partnership, or other enterprise engaged in the promotion of hookah or shisha smoking, sometimes referred to as a hookah bar, café, or lounge.”

I. It shall be an affirmative defense to a prosecution under subsections B, C, F, G, or H of this section that the person charged with the violation of a subsection that requires an individual to be twenty-one years of age or older was presented with and reasonably relied upon a document that identified the individual as being twenty-one years of age or older.”

Section 3. This ordinance shall be in full force and effect from and after its passage and publication as provided by Charter.

Section 4. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance shall be available for inspection and acquisition in the office of the City Clerk.

Introduced, read by title and passed this _____ day of _____, 2021, by the City Council, City of Fountain, Colorado, signed by the Mayor, and ordered published by title with a summary written by the City Clerk together with a statement that the ordinance is available for public inspection and acquisition in the office of the City Clerk in the El Paso County Advertiser and News, a newspaper of general circulation in the City of Fountain.

Gabriel Ortega, Mayor

ATTEST:

Silvia Huffman, City Clerk

Introduced, read by title, and passed on second and final reading, as amended, on the 09 day of March, 2021, and ordered published by title with a summary of the amendment written by the City Clerk together with a statement that a copy of the amendment and the ordinance as amended are available for public inspection and acquisition in the office of the City Clerk in the El Paso County Advertiser and News, a newspaper of general circulation in the City of Fountain, Colorado, in accordance with the City Charter.

Gabriel Ortega, Mayor

ATTEST:

Silvia Huffman, City Clerk