

## **ORDINANCE NO. 4642**

**AN ORDINANCE OF THE CITY OF HASTINGS, NEBRASKA, TO AMEND SECTIONS 18-140 THROUGH 18-147 OF THE OFFICIAL CITY CODE; TO ADDRESS REGULATIONS RELATING TO TOBACCO AND VAPING; REPEAL ANY ORDINANCE IN CONFLICT HEREWITH; AND TO PROVIDE WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT.**

**BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF HASTINGS, NEBRASKA:**

**SECTION 1.** That Hastings City Code Section 18-140 through 18-147 of the Official City Code be amended to read as follows:

**18-140. Tobacco and Vaping; terms defined.**

For the purpose of Section 18-140, through 18-147, unless the context otherwise requires:

(1) 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 electronic nicotine delivery system, cigarette, cigar, or other tobacco product, or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act;

(2) Cigarette means any product that contains nicotine, 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 and 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 which, 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 subdivision (2)(a) of this section;

(3) Electronic nicotine delivery system means any product or device containing nicotine, tobacco, or tobacco derivatives that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, to simulate smoking by delivering the nicotine, tobacco, or tobacco derivatives in vapor, fog, mist, gas, or aerosol form to a person inhaling from the product or device.

(4) Retailer means any person, firm or corporation offering tobacco products, cigarettes, cigars, vaping products, vaping devices, electronic nicotine delivery systems, electronic cigarettes, alternative nicotine products or tobacco in any form, for sale at retail to members of the public, and shall also include any private club or organization which offers tobacco products for sale to its members.

(5) Self-service display means a retail display that contains tobacco products, cigarettes, cigars, vaping products, vaping devices, electronic nicotine delivery systems, electronic cigarettes, alternative nicotine products or tobacco in any form, and is located in an area openly accessible to a retailer's customers and from which such customers can readily access the product without the assistance of a salesperson. Self-service display does not include a display case that holds tobacco product, cigarettes, cigars, vaping products, vaping devices, electronic nicotine delivery systems, electronic cigarettes, alternative nicotine products or tobacco in any form, behind locked doors;

(6) Tobacco products means any product or substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco or any finely cut, ground, powdered or leaf tobacco, that is intended to be placed in a person's mouth.

(7) Tobacco specialty store means a retail store that (a) derives at least seventy-five percent of its revenue from tobacco products, cigarettes, cigars, vaping products, vaping devices, electronic nicotine delivery systems, electronic cigarettes, alternative nicotine products or tobacco in any form and (b) does not permit persons under the age of twenty-one (21) years to enter the premises;

(8) Vape(ing). Vape(ing) shall mean the inhaling and exhaling of the aerosol produced by any vaping device.

(9) Vaping Device. Vaping device shall mean a device that consists of a mouthpiece, battery, a cartridge for containing the e-liquid or e-juice and a heating component for the device that is powered by a battery or other electronic means. Vaping devices may include but are not limited to, e-cigarettes, vape pens, advanced personal vaporizers(MODS), JUUL'S or any other device whether professionally made or homemade that are designed and used to inhale vapor products.

(10) Vaping Products. Including but not limited to pods, cartridges, e-liquid or e-juice, regardless of the presence of nicotine.

(11) Vending machine means any mechanical, electric or electronic self-service device which, upon insertion of money, tokens, or any other form of payment, dispenses tobacco products, cigarettes, cigars, vaping products, vaping devices, electronic

nicotine delivery systems, electronic cigarettes, alternative nicotine products or tobacco in any form.

**18-141. Tobacco and Vaping; sales prohibited; sign.**

(1) It shall be unlawful for any retailer or any other person to sell, offer for sale, give away or deliver tobacco products, cigarettes, cigars, vaping products, vaping devices, electronic nicotine delivery systems, electronic cigarettes, alternative nicotine products or tobacco in any form, to any person under the age of twenty-one (21) years, regardless of the presence of nicotine.

(2) Every retailer shall post signs at or near every cash register and vending machine where tobacco products, cigarettes, cigars, vaping products, vaping devices, electronic nicotine delivery systems, electronic cigarettes, alternative nicotine products or tobacco in any form, are offered for sale for the purpose of informing members of the public or members of the club or organization of the restriction upon sale of tobacco products, cigarettes, cigars, vaping products, vaping devices, electronic nicotine delivery systems, electronic cigarettes, alternative nicotine products or tobacco in any form, to persons under twenty-one (21) years. Each such sign shall be plainly visible and state "The sale of tobacco products, cigarettes, cigars, vaping products, vaping devices, electronic nicotine delivery systems, electronic cigarettes, alternative nicotine products or tobacco in any form, to persons under twenty-one (21) years of age is prohibited by law". Such sign shall be on light colored paper, measuring at least eight and one-half (8 ½) inches by eleven (11) inches, and bear legible dark letters, not less than one-half (1/2) inch in height.

**18-142. Tobacco and Vaping; retailer charged with sale; defense.**

In any prosecution of or any proceeding against any retailer charged with having made a sale to a person under the age of twenty-one (21) years, proof of the following shall be an affirmative defense to the charge:

(1) The purchaser falsely represented in writing and supported with photographic documentary proof that he or she was of legal age to purchase tobacco; and

(2) The appearance of such purchaser was such that an ordinary and prudent person would believe that such appearance conformed to the documentary description of appearance presented by the purchaser; and

(3) The sale was made in good faith, in reliance upon the written representation supported by photographic documentary proof, other documentary evidence, and the appearance of the purchaser, and in the belief, the purchaser was of legal age to make such purchase.

**18-143. Tobacco and Vaping; purchase by minors prohibited.**

It shall be unlawful for any person under the age of twenty-one (21) years to purchase or attempt to purchase tobacco products, cigarettes, cigars, vaping products, vaping devices, electronic nicotine delivery systems, electronic cigarettes, alternative nicotine products or tobacco in any form. It shall further be unlawful for any person under the age of twenty-one (21) to misrepresent his or her identity or age, or to use any false or altered identification for the purpose of purchasing tobacco products. It shall be unlawful for any person under the age of twenty-one (21) to purchase any vaping products, vaping devices, or electronic nicotine delivery systems, regardless of the presence of nicotine.

**18-144. Tobacco and Vaping; possession or use; exceptions.**

(1) It shall be unlawful for any person under the age of twenty-one (21) years to possess or use any tobacco products, cigarettes, cigars, vaping products, vaping devices, electronic nicotine delivery systems, electronic cigarettes, alternative nicotine products or tobacco in any form, regardless of the presence of nicotine, except that a person under the age of twenty-one (21) years:

(2) May possess tobacco products, cigarettes, cigars, vaping products, vaping devices, electronic nicotine delivery systems, electronic cigarettes, alternative nicotine products or tobacco in any form, while under the direct supervision of the parent or natural or legal guardian of such person, and in the privacy of the home of such parent or guardian;

(3) May sell or handle any unopened container or tobacco products, cigarettes, cigars, vaping products, vaping devices, electronic nicotine delivery systems, electronic cigarettes, alternative nicotine products or tobacco in any form, in the course of his or her employment through a licensed retailer; or

(4) May possess or purchase tobacco products, cigarettes, cigars, vaping products, vaping devices, electronic nicotine delivery systems, electronic cigarettes, alternative nicotine products or tobacco in any form, while under the direct supervision of a law enforcement officer for the purpose of testing or enforcing compliance with statutes, laws or ordinances governing the sale of tobacco products, cigarettes, cigars, vaping products, vaping devices, electronic nicotine delivery systems, electronic cigarettes, alternative nicotine products or tobacco in any form.

**18-145. Tobacco; placement and use of vending machines and self-service displays.**

Except as otherwise provided under this section, a retailer may sell tobacco products, cigarettes, cigars, vaping products, vaping devices, electronic nicotine delivery systems, electronic cigarettes, alternative nicotine products or tobacco in any form, only in a direct, face-to-face exchange between the retailer and the consumer. Examples of methods of sale that are not permitted include vending machines and self-service displays.

Exceptions. The following methods of sale are permitted:

(1) Vending machines (include vending machines that sell packaged, single cigarettes) and self-service displays that are located in facilities where the retailer insures that no person under the age of twenty-one (21) years is present, or permitted to enter, at any time.

**18-146. Tobacco and Vaping; penalties.**

(1) Any violation of the provisions of Sections 18-141, 143, and 144 of the Hastings City Code shall be subject to a penalty as provided in §1-109 of this code. Where an offense is ongoing and permitted to continue, each day of commission of the offense shall constitute a separate offense.

(2) Any person found to have violated Sections 18-143 or 18-144 of this ordinance may be offered, as an option in lieu of payment of the fine prescribed herein, participation in a diversionary program. The cost, hours and duration of the diversionary program shall be established by the agency presenting the program. Upon certification by such agency evidencing attendance by such violator of the diversionary program, any monetary penalty prescribed herein, excluding court costs, shall be deemed satisfied.

**18-147. Use of tobacco products and Vaping in public areas prohibited.**

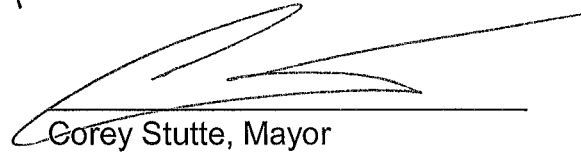
(1) It shall be unlawful for any person to smoke in all City owned buildings, in or upon vehicles owned by the City of Hastings, within the perimeter fencing or public swimming pools, or within any City of Hastings public parks.

(2) For purposes of this ordinance, smoking shall mean inhaling, exhaling, vaping, burning or carrying any lighted cigarette, cigar, pipe, smoking paraphernalia, tobacco, clover, weed, plant or substance.

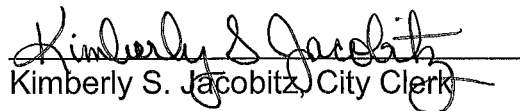
**SECTION 2.** That any ordinance passed and approved prior to the passage of this ordinance, and in conflict with its provision, is hereby repealed.

**SECTION 3.** This ordinance shall take effect and be in full force from and after its passage, approval and publication in pamphlet form.

**PASSED AND APPROVED** by the Mayor and City Council of the City of Hastings, Nebraska, this 14<sup>th</sup> day of September, 2020.

  
Corey Stutte, Mayor

ATTEST:

  
Kimberly S. Jacobitz, City Clerk

(SEAL)



APPROVED AS TO FORM

  
Clint Schukei, City Attorney