

ORDINANCE NO. 2019-24

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF FLAGSTAFF, COCONINO COUNTY, ARIZONA, AMENDING FLAGSTAFF CITY CODE TITLE 7, *HEALTH AND SANITATION*, CHAPTER 7-09, *TOBACCO PRODUCTS* BY PROHIBITING THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 21; ESTABLISHING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, Flagstaff recognizes that the use of tobacco products has devastating health and economic consequences.

WHEREAS, Tobacco product use leads to more than \$300 billion in health care and lost worker productivity costs each year according to the U.S. Department of Health & Human Services and the American Journal of Preventative Medicine.

WHEREAS, Young minds are particularly susceptible to the addictive properties of nicotine and as a result, approximately 3 out of 4 teen smokers end up smoking into adulthood according to the U.S. Department of Health & Human Services.

WHEREAS, an estimated 5.6 million youth aged 0 to 17 are projected to die prematurely from a commercial tobacco-related illness if prevalence rates do not change according to the U.S. Department of Health & Human Services.

WHEREAS, National data show that about 95 percent of adults who smoke begin smoking before they turn 21 and the time between ages 18 to 20 is a critical period when many adults who smoke move from experimental smoking to regular, daily use according to the U.S. Department of Health & Human Services.

WHEREAS, Data from the National Youth Tobacco Survey demonstrates that youth use of e-cigarettes continues to increase and the overall use rate of e-cigarettes among youth continues to be higher than other forms of tobacco and has stymied previous progress in the reduction of the overall tobacco use rate for youth according the Centers for Disease Control & Prevention.

WHEREAS, The popularity among youth of newer products, such as the brand JUUL, which currently dominates the market, is likely responsible for the significant increase of e-cigarette usage among high school students according to the Centers for Disease Control & Prevention.

WHEREAS, In 2015, the Institute of Medicine (now the National Academy of Medicine) concluded that raising the minimum legal sales age for tobacco products nationwide would reduce tobacco initiation, particularly among adolescents aged 15 to 17, improve health across the lifespan, and save lives; and that raising the minimum legal sales age for tobacco products nationwide to 21 would, over time, lead to a 12 percent decrease in smoking prevalence according to the Institute of Medicine.

WHEREAS, The Institute of Medicine also predicted that raising the minimum legal sales age for tobacco products nationwide to 21 would result in 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost for those born between 2000 and

2019 and would result in near immediate reductions in preterm birth, low birth weight, and sudden infant death syndrome.

WHEREAS, Tobacco21.org indicates that a growing number of state and local jurisdictions have enacted minimum legal sales age 21 policies to further restrict access to commercial tobacco.

WHEREAS, Three-quarters of adults support raising the minimum legal sales age for tobacco products to 21, including seven out of ten adults who smokes according the American Journal of Preventive Medicine.

WHEREAS, Strong policy enforcement and monitoring of retailer compliance with tobacco control policies (e.g. requiring identification checks) is necessary to achieve reductions in youth tobacco sales rates after raising the minimum legal sales age to 21;

WHEREAS, The National Academy of Medicine recommends imposing penalties on business owners to provide sufficient incentives to comply with the law, and business owners with an economic incentive to avoid violations are more likely to establish company-wide policies and incorporate instruction on tobacco laws into employee training;

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. The Flagstaff City Code, Title 7, *Health and Sanitation*, Chapter 7-09 *Tobacco Products*, is hereby amended as indicated by the following language (additions shown as underlined text, and deletions shown as strike-through text):

7-09-001-0001 DEFINITIONS

In this chapter, unless the context otherwise requires:

~~A. Person means the state, the county, a political subdivision of the state, other governmental entities, a corporation, firm, partnership, association, organization and any other group acting as a unit, as well as an individual. Person also includes a trustee, receiver, an assignee or similar representative.~~

~~B. Tobacco product means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other manner of ingestion.~~

A. Distribute or Distribution means to furnish, give, provide, sell, or to attempt to do so, whether gratuitously or for any type of compensation.

B. Electronic smoking device means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance intended to be aerosolized or vaporized during the use of the device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs.

devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

- C. No Sales Order for Tobacco Products means and order from the City Manager or the City Manager's designee to immediate cease all sales of any and all tobacco products.
- D. Person means any natural person.
- E. Purchaser means any person who obtains or attempts to obtain a tobacco product.
- F. Tobacco retail establishment means any place of business where tobacco products are available for sale to the general public. The term includes but is not limited to grocery stores, tobacco product shops, kiosks, convenience stores, gasoline service stations, bars, and restaurants.
- G. Self-service display means any display from which customers may select a tobacco product without assistance from the tobacco retailer or the tobacco retailer's agent or employee and without a direct person-to-person transfer between the purchaser and the tobacco retailer or tobacco retailer's agent or employee.
- H. Tobacco product means: (1) any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (2) any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or (3) any component, part, or accessory of (1) or (2), whether or not any of these contain tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, and pipes. Tobacco product does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.
- I. Tobacco retailer means any person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation who owns or operates any tobacco retail establishment. Tobacco retailer does not mean the non-management employees of an owner or operator of any tobacco retail establishment.
- J. Vending machine means any mechanical, electrical or electronic device that, on insertion of money, tokens or any other form of payment, dispenses tobacco products.

7-09-001-0002 LICENSE REQUIRED

- A. Each tobacco retailer engaging in the distribution of tobacco products, at each location in Flagstaff shall secure, and display at all times, a tobacco retail sales license from the City or its authorized agent before engaging or continuing to engage in such business. No tobacco retailer may distribute tobacco products without a valid tobacco retail sales license.
- B. The fee for a tobacco retail sales license shall be set according to a separate fee schedule adopted and updated from time to time by City Council and used to cover the

administrative cost for licensing administration, education and training, retail inspections, and unannounced compliance checks. The tobacco retail sales license fee should not exceed the cost of the regulatory program authorized beyond this Ordinance.

- C. A tobacco retail sales license cannot be renewed if the tobacco retailer has outstanding fines pursuant to this Ordinance.
- D. No tobacco retail sales license shall be issued or renewed to a tobacco retail sales license unless the tobacco retailer signs a form stating that the tobacco retailer has read this Ordinance and has provided training to all employees on the sale of tobacco products. Such training shall include information that the sale of tobacco products to persons under 21 years of age is illegal, the types of identification legally acceptable for proof of age, and that sales to persons under 21 years of age shall subject the tobacco retailer to penalties.
- E. Any business found to be selling tobacco products without a license shall be fined and issued a No Sales Order for Tobacco Products pursuant to section 7-09-001-0008(A) of this Chapter.

7-09-001-0003 MINIMUM LEGAL SALES AGE FOR TOBACCO PRODUCTS

The distribution of any tobacco product to a person under the age of 21 is prohibited.

7-09-001-0004 AGE VERIFICATION

Before distributing any tobacco product, the tobacco retailer or the tobacco retailer's agent or employee shall verify that the purchaser is at least 21 years of age. Each tobacco retailer or tobacco retailer's agent or employee shall examine the purchaser's government-issued photographic identification. No such verification is required for a person over the age of 30. That a purchaser appears to be 30 years of age or older shall not constitute a defense to a violation of this section.

7-09-001-0005 SELF-SERVICE DISPLAYS

No tobacco retailer or their employee or agent shall sell or otherwise distribute tobacco products by or from a self-service display or vending machine except in places where persons under the age of 21 are not permitted access at any time.

7-09-001-0006 SIGNAGE

No tobacco retailer shall sell or permit the sale of tobacco products in the City unless a notice is posted at any location where tobacco products are available for purchase. All notices must be posted in a manner conspicuous to both employees and consumers, unobstructed from view in their entirety, and within six feet of each register where tobacco products are available for purchase. The city of Flagstaff shall provide this notice, which shall state "NO PERSON UNDER THE AGE OF 21 MAY BE SOLD TOBACCO PRODUCTS, INCLUDING ELECTRONIC SMOKING DEVICES." The notice must be at least 14" by 11" and the words on the notice must be legibly printed in a high contrast red color with capitalized letters at least one inch high.

7-09-001-0007 ENFORCEMENT

The tobacco retailer shall be subject to at least two unannounced compliance checks per year. The City or its authorized agent shall conduct compliance checks by engaging persons between the ages of 18 and 20 to enter the tobacco retail establishment to attempt to purchase tobacco products. Unannounced follow-up compliance checks of all non-compliant tobacco retailers are required within three months of any violation of this Ordinance. The results of all compliance checks shall be published by the City or its authorized agent at least annually and made available to the public upon request.

7-09-001-00028 PENALTIES

~~A. No person who owns, conducts, operates or manages a business where tobacco products are sold, or are available for sale from a vending machine, nor any person who sells or offers for sale tobacco products, shall place, store or display, or cause to be placed, stored or displayed, such tobacco products or vending machine in an area or manner that is accessible to the public without employee assistance.~~

~~B. A person is exempt from the requirements of this section if both:~~

~~1. The business where tobacco products are sold prohibits entry of individuals under the age of eighteen (18) years at all times; and~~

~~2. Photographic identification is required from any individual who appears to be twenty-six (26) years of age or younger prior to entering the business where tobacco products are sold.~~

~~C. A violation of this chapter is punishable as a civil offense or as a class 3 misdemeanor. Prior to the issuance of a criminal citation, the Chief of Police or his designated agent shall serve the person to be cited with a written notice of violation if a notice of violation for the same offense, or a substantially similar offense has not been served within the previous 180 (one hundred eighty) days. A notice of violation may be served by personal delivery or via certified mail, return receipt requested. Return of the receipt shall be prima facie evidence of service. If the violation has ceased within 14 (fourteen) days from the date of service of the notice, no criminal citation shall be issued. A person found in violation of this chapter is subject to a fine of one hundred dollars (\$100.00) for the first offense and up to five hundred dollars (\$500.00) for each subsequent offense, except that a violation may be charged as a class 2 criminal misdemeanor if the alleged violator has been responsible on three or more violations of this chapter.~~

A. Tobacco retailers. Any tobacco retailer found to have violated this Ordinance shall be subject to:

1. For a first violation, a fine no less than \$500;

2. For a second violation within a thirty-six (36) month period, a fine no less than \$750 and the tobacco retailer shall be prohibited from distributing tobacco products for a minimum of seven (7) days;

3. For a third violation within a thirty-six (36) month period, a fine no less than \$1,000 and the tobacco retailer shall be prohibited from distributing tobacco products for a minimum of thirty (30) days;

4. For a fourth and any subsequent violations within a thirty-six (36) month period, a fine no less than \$1,000 and the tobacco retailer shall be prohibited from distributing tobacco products for a period of three (3) years.

B. Employees. Any person found to have violated this Ordinance while acting as a non-management agent or employee of a tobacco retailer shall be subject to non-criminal, non-monetary penalties, including, but not limited to education classes.

C. Other persons. Any person 21 years of age or older, besides a tobacco retailer or a tobacco retailer's agent or employee, who violates this Ordinance is subject to an administrative fine of \$50.

7-09-001-0010 RELATED VIOLATIONS

A violation of any federal, state, or local law, ordinance provision, or other regulation relating to tobacco products is also a violation of this Ordinance. In addition to any other penalty, a tobacco retailer who violates any provision of this Ordinance or any federal, state, or local law, ordinance provision, or other regulation relating to tobacco products, shall be subject to penalties stated in this Ordinance, including fines and a prohibition of the sale of tobacco products

7-09-001-0011 EXCEPTIONS AND DEFENSES

- A. The penalties in this Ordinance do not apply to a person younger than 21 years old who purchases or attempts to purchase tobacco products while under the direct supervision of City staff or their authorized appointees for training, education, research, or enforcement purposes.
- B. Nothing in this Ordinance prohibits an underage person from handling tobacco products in the course of lawful employment by a tobacco retailer.
- C. It shall be an affirmative defense to a violation of this Ordinance for a tobacco retailer or their agent or employee to have reasonably relied on valid government issued identification demonstrating proof of age.

7-09-001-0012 LIBERAL CONSTRUCTION

This Ordinance shall be liberally construed so as to further its purposes.

7-09-001-000313 SEVERABILITY

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

7-09-001-000414 EFFECTIVE DATE

The provisions of this Ordinance shall be enforceable 60 (sixty) days from the date this Ordinance becomes effective.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 2nd day of July, 2019.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY