

OCA \_\_\_\_\_  
DELINEATED

8/10/17

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING SECTIONS 7.60.010, 7.60.020, 7.60.030, 7.60.040, 7.60.050, 7.60.060, 7.60.070, 7.60.080 AND CREATING 7.60.100 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO TOBACCO – SALE OF CIGARETTES AND TOBACCO PRODUCTS REPEALING THE ORIGINAL OF SAID SECTIONS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 7.60.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Definitions.

As used in this chapter the following words shall have the following meanings:

“Cigarettes” means any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape, and irrespective of tobacco being flavored, adulterated or mixed with any other ingredient if the wrapper is in greater part made of any material other than tobacco.

“Conviction” means, for the purposes of this chapter, any court adjudication of guilt, diversion, or deferred judgment or payment of the fine if ticket was not contested in court.

“Director of Public Works and Utilities” includes any designee.

“Electronic vaping devices” means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

“Hookah product” means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, shisha, or other plant material.

“Permit holder” means any person to whom a current permit has been issued under this Chapter authorizing such person to conduct the business within the city limits.

“Person” means any person, firm, partnership, association, corporation, company or organization of any kind.

“Package” means a container in which no more than 25 individual cigarettes are wrapped and sealed by the manufacturer of cigarettes prior to shipment to a wholesale dealer.

“Tobacco products” means all tobacco-derived products or nicotine delivery products, including but not limited to, cigarettes, electronic vaping devices, cigars, hookah products, pipes, and oral and smokeless tobacco (spit and spitless, chew and snuff) and nasal tobacco. It also includes any herbal product intended to mimic tobacco, contain tobacco flavoring or deliver nicotine.

“Sample” means cigarettes, tobacco products, hookah products, liquid or electronic vaping devices distributed to members of the general public at no cost for the purpose of promoting the product.

“Vending machine” means any coin, currency or token operated machine, contrivance or device, by means of which tobacco products are sold in their original package.

SECTION 2. Section 7.60.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Permit required—Nontransferable—Expiration date. It is unlawful for any person to:

- (a) Business Permit. Engage in the operation of a business selling, excluding selling by vending machine, tobacco products at one or more locations within the city, unless such person has procured from the City of Wichita Public Works & Utilities a permit to engage in such business at each such location. Provided, however, that persons operating such a business on the effective date of the ordinance codified in this section shall make application for such permit within 30 days of said effective date and may continue to operate such business until the permit is obtained.

- (b) Vending Machine Permit. Engage in the operation of a business of selling tobacco products from one or more vending machines unless such person has procured from the City of Wichita Public Works & Utilities a permit for each such vending machine and one business permit as required by subsection (a). Such business permit *is* applicable to all locations at which that person sells tobacco products from a vending machine.
- (c) A permit issued under this section is nonassignable and nontransferable. Each permit issued under this section shall expire on December 31st of the year in which issued.

SECTION 3. Section 7.60.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Permit fee.

- (a) The fee for each business permit required by Section 7.60.020(a) of this chapter shall be \$200.00 per year.
- (b) The fee for the vending machine permit required by Section 7.60.020(b) of this chapter shall be \$12.00 dollars per year for each vending machine.

SECTION 4. Section 7.60.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Prohibited conduct.

It is unlawful for any person:

- (a) To sell, give away, or provide in any manner, tobacco products to any person under the age of 18 years;
- (b) For any person under the age of 18 years to purchase or possess or attempt to purchase or possess ~~or~~ tobacco products; provided, however, that this shall not prohibit such person from working as an employee at a place where tobacco products are sold so long as the minor does not possess or sell the tobacco products; nor shall this ordinance prohibit government employees and volunteers from undercover purchases or attempts to purchase carried out for the purpose of enforcing this chapter and any applicable state or federal law.
- (c) To sell or deliver tobacco products to any person who appears to be under the age of 27 years without having first verified the person's age by means of a photographic identification card such as a driver's license, state identification card, passport or military identification;
- (d) To sell cigarettes in broken packages; or
- (e) To sell tobacco products in a vending machine which does not clearly identify the operator of the machine, and which does not bear a conspicuous notice stating:
  - It is illegal for anyone under the age of eighteen years to purchase cigarettes or other tobacco products, K.S.A. 79-3321.
 Provided, however, that in the event a machine is found to not have such a notice, the operator of the machine shall be notified and given seven days within which to place such notice on the machine before being charged with a violation of this requirement;
- (f) To sell tobacco products in a vending machine in any establishment, or portion thereof, which is open to minors; provided, however, that this section shall not apply to:
  - (1) the installation and use by the proprietor, or his or her agent, or employees, of tobacco vending machines behind a counter, or in some place in such establishment, or portion thereof, to which access by minors is prohibited by law,
  - (2) The installation and use of a tobacco vending machine in a commercial building, or industrial plant, or portions thereof, where the public is not customarily admitted and where machines are intended for the sole use of the employees employed therein who are not minors, or
  - (3) A vending machine which has a lock-out device which is inoperable in the continuous standby mode, and which requires manual activation by the person supervising the operation of the machine each time a package of cigarettes tobacco products is purchased.

SECTION 5. Section 7.60.050 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

Suspension or Revocation of Permit

- (a) A permit for the sale of cigarettes or tobacco products issued under this chapter may be suspended or revoked by the Director of Public Works & Utilities:

- (1) For a period of up to seven days upon any conviction of the permit holder or any employee or designee of the permit holder for any violation of this chapter;
- (2) For a period of up to 14 days upon the second conviction of the permit holder or any employee or designee of the permit holder for any violation of this chapter within six months;
- (3) For a period of up to six months upon the third conviction of the permit holder or any employee or designee of the permit holder for any violation of this chapter within one year.

(b) Notice of Suspension or Revocation

For the purposes of subsections (a) of this section, the Director of Public Works and Utilities shall provide written notice of the intent to suspend or revoke a permit by personal service or by certified mail, return receipt requested. The notice shall be sent to the mailing address of the licensee on file with the city treasurer. The notice shall provide the effective date of the revocation or suspension of the license or permit. Such notice shall detail the reasons or basis for the suspension or revocation of the license or permit and shall specify the rights of the licensee to appeal any such revocation or suspension.

(c) Removal of Product

The permit holder of any permit for the sale of cigarettes or tobacco products that has been suspended or revoked is required to remove all products and advertising for those products from view of the consumer, until suspension or revocation has been removed from the permit. Failure to remove items is punishable by 7.60.080.

SECTION 6. Section 7.60.060 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

**Appeal from Suspension, or Revocation**

Any applicant, licensee or permit holder aggrieved by the suspension or revocation of a permit may file with the city treasurer a written notice of appeal within ten business days of the decision by the Director of Public Works or designee. The notice of appeal shall specify:

- (1) The name and address of the appellant;
- (2) The date of application;
- (3) The date of the suspension of the license, permit or application; and
- (4) The factual basis for the appeal.

(b) Upon receipt of a complete and timely filed notice of appeal, the city treasurer shall schedule a hearing no later than ten days from the date of the filing of the notice of appeal, unless good cause is shown for a delay. Any appeal shall stay the suspension or revocation of the license or permit until the matter is heard by the city treasurer.

(c) The city treasurer may approve the suspension or revocation, overrule the suspension, or revocation or modify the decision of the Director of Public Works or designee.

(d) In any hearing before the city treasurer pursuant to this section, a certified copy of conviction from any local or state court is prima facie evidence of a violation.

(e) The city treasurer's decision may be appealed to the Eighteenth Judicial District Court of the State of Kansas pursuant to K.S.A. 60-2101 and any amendments thereto. Any such appeal to the district court shall not stay the suspension or revocation of the permit, or any modification imposed thereupon by the city treasurer.

SECTION 7. Section 7.60.070 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

**Enforcement**

Enforcement of the provisions of this chapter shall be primarily by the Director of Public Works & Utilities and his/her designated representative. In addition, commissioned law enforcement officers are authorized to enforce this chapter.

SECTION 8. Section 7.60.080 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

**Penalty**

(a) Any person convicted of violating the provisions of Section 7.60.040 (b) shall be guilty of a tobacco infraction and upon conviction shall be fined \$55 for a first offense; \$100 for a second offense, and

\$150 for a third or subsequent offense. A request to the appropriate court may be made that consideration be given to community service for the offender as an alternative to any set fine.

- (b) Any person convicted of violating the provisions of this chapter other than 7.60.040(b) shall be guilty of a misdemeanor.

SECTION 9. Section 7.60.100 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

Conflict of Law

Nothing in this chapter shall be interpreted to authorize any person licensed hereunder to transact business selling or providing cigarettes or tobacco products in violation of any state statute or federal law governing such sales or activities, nor shall compliance with the provisions of this chapter relieve any person from compliance with any state statutes or federal laws governing such sales or activities.

SECTION 10. The original Sections 7.60.010. 7.60.020. 7.60.030, 7.60.040, 7.60.050, 7.60.060, 7.60.070, 7.60.080 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 11. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this \_\_\_\_\_ day of October, 2017.

\_\_\_\_\_  
Jeff Longwell, Mayor

ATTEST:

Approved as to Form:

\_\_\_\_\_  
Karen Sublett, City Clerk

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Jennifer Magana, Director of Law and City Attorney