

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AMENDING AND RENAMING SECTION 15-412 OF ARTICLE IV, CHAPTER 15 OF THE CODE OF CITY OF NORMAN TO THE PREVENTION OF YOUTH ACCESS TO TOBACCO AND VAPOR PRODUCTS; PROVIDING DEFINITIONS FOR THE PURPOSES THEREOF; PROHIBITING THE FURNISHING OF TOBACCO AND VAPOR PRODUCTS TO ANYONE UNDER THE AGE OF EIGHTEEN, PROVIDING FINES AND COSTS FOR VIOLATIONS, AND PROVIDING EXCEPTIONS IN CERTAIN CIRCUMSTANCES; PROHIBITING THE POSSESSION OF TOBACCO AND VAPOR PRODUCTS BY ANYONE UNDER THE AGE OF EIGHTEEN, PROVIDING FINES AND COSTS FOR VIOLATIONS, PROVIDING FOR DPS NOTIFICATION OF FAILURE TO PAY SUCH FINES; PROHIBITING DISTRIBUTION OF TOBACCO AND VAPOR PRODUCT SAMPLES; PROHIBITING THE SALE OF TOBACCO EXCEPT FOR IN ORIGINAL PACKAGING; PROHIBITING THE DISPLAY OR SALE OF TOBACCO OR VAPOR PRODUCTS WHERE SELF-ACCESSIBLE BY ANYONE UNDER THE AGE OF EIGHTEEN; PROVIDING FOR NOTICE OF VIOLATIONS UNDER SECTION 15-412 TO THE ABLE COMMISSION; AMENDING SECTION 15-506 WHICH REFERENCED THE PREVIOUS VERSION OF SECTION 15-412; AND PROVIDING FOR THE SEVERABILITY THEREOF.

§1. WHEREAS, in an effort to protect and enhance the safety of minors, the State of Oklahoma has prohibited the sale or possession of vapor products for anyone under the age of eighteen (18) years of age; and

§2. WHEREAS, the City of Norman desires to support and enforce the State of Oklahoma's policy of protection and safety of minors by adopting Ordinance O-1920-46.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA:

* * *

§ 3. THAT Section 15-412 of Chapter 15 of the Code of Ordinances of the City of Norman shall be amended to read as follows:

* * *

Sec. 15-412. – Prevention of Youth Access to Tobacco and Vapor Products

(a) Definitions. For the purposes of this section, the following definitions shall apply:

“Person” means any individual, firm, fiduciary, partnership, corporation, trust, or association, however formed;

“Proof of age” means a driver license, license for identification only, or other generally accepted means of identification that describes the individual as eighteen (18) years of age or older and contains a photograph or other likeness of the individual and appears on its face to be valid;

“Sample” means a tobacco product or vapor product distributed to members of the public at no cost for the purpose of promoting the product;

“Sampling” means the distribution of samples to members of the public in a public place;

“Tobacco product” means any product that contains tobacco and is intended for human consumption;

“Transaction scan” means the process by which a seller checks, by means of a transaction scan device, the validity of a driver license or other government-issued photo identification;

“Transaction scan device” means any commercial device or combination of devices used at a point of sale or entry that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver license or other government-issued photo identification; and

“Vapor product” shall mean noncombustible products, that may or may not contain nicotine, that employ a mechanical heating element, battery, electronic circuit, or other mechanism, regardless of shape or size, that can be used to produce a vapor in a solution or other form. “Vapor products” shall include any vapor cartridge or other container with or without nicotine or other form that is intended to be used with an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of a solution, that may or may not contain nicotine, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo or electronic device. “Vapor products” do not include any products regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

(b) Furnishing of tobacco products or vapor products to persons under the age of eighteen (18).

(1) It shall be an offense for any person to sell, give or furnish in any manner any tobacco product or vapor product to another person who is under eighteen (18) years of age, or to purchase in any manner a tobacco product or vapor product on behalf of any such person. It shall not be unlawful for an employee under eighteen (18) years of age to handle tobacco products or vapor products when required in the performance of the employee's duties.

- (2) A person engaged in the sale or distribution of tobacco products or vapor products shall demand proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser may be under eighteen (18) years of age. If an individual engaged in the sale or distribution of tobacco products or vapor products has demanded proof of age from a prospective purchaser or recipient who is not under eighteen (18) years of age, the failure to subsequently require proof of age shall not constitute a violation of this subsection.
- (3) Any person convicted of violating subsection (1) or (2) of this Section shall be punished by a fine of:
- i. not more than One Hundred Dollars (\$100.00) for the first offense,
 - ii. not more than Two Hundred Dollars (\$200.00) for the second offense within a two-year period following the first offense,
 - iii. not more than Three Hundred Dollars (\$300.00) for a third offense within a two-year period following the first offense.
 - iv. not more than Three Hundred Dollars (\$300.00) for a fourth or subsequent offense within a two-year period following the first offense.
- (4) Proof that the defendant demanded, was shown, and reasonably relied upon proof of age shall be a defense to any action brought pursuant to this section. A person cited for violating this section shall be deemed to have reasonably relied upon proof of age, and such person shall not be found guilty of the violation if such person proves that:
- i. the individual who purchased or received the tobacco product or vapor product presented a driver license or other government-issued photo identification purporting to establish that such individual was eighteen (18) years of age or older, or
 - ii. the person cited for the violation confirmed the validity of the driver license or other government-issued photo identification presented by such individual by performing a transaction scan by means of a transaction scan device.

Provided, that this defense shall not relieve from liability any person cited for a violation of this section if the person failed to exercise reasonable diligence to determine whether the physical description and picture appearing on the driver license or other government-issued photo identification was that of the individual who presented it. The availability of the defense described in this subsection does not affect the availability of any other defense under any other provision of law.

- (5) If the sale is made by an employee of the owner of a store at which tobacco products or vapor products are sold at retail, the employee shall be guilty of the violation and shall be subject to the fine.
 - (6) Upon failure of the employee to pay the administrative fine within ninety (90) days of the day of the assessment of such fine, the Clerk of the Municipal Court shall notify the Department of Public Safety, and the Department shall suspend or not issue a driver license to the employee until proof of payment has been furnished to the Department of Public Safety.
- (c) Possession of tobacco products or vapor products by persons under the age of eighteen (18).
- (1) It shall be an offense for a person who is under eighteen (18) years of age to purchase, receive, or have in his or her possession a tobacco product, or vapor product, or to present or offer to any person any purported proof of age which is false or fraudulent, for the purpose of purchasing or receiving any tobacco product or vapor product. It shall not be unlawful for an employee under eighteen (18) years of age to handle tobacco products or vapor products when required in the performance of the employee's duties.
 - (2) Any person convicted of violating subsection (1) of this sections shall be punished by a fine of:
 - i. Not to exceed One Hundred Dollars (\$100.00) for a first offense; and
 - ii. Not to exceed Two Hundred Dollars (\$200.00) for a second or subsequent offense within a one-year period following the first offense.
 - (3) Upon failure of the individual to pay the administrative fine within ninety (90) days of the day of the fine, the Clerk of the Municipal Court shall notify the Department of Public Safety, and the Department shall suspend or not issue a driver license to the individual until proof of payment has been furnished to the Department of Public Safety.
- (d) Distribution of tobacco products or vapor products and product samples restricted
- (1) It shall be unlawful for any person or retailer to distribute tobacco products, vapor products or product samples to any person under eighteen (18) years of age.
 - (2) No person shall distribute tobacco products, vapor products or product samples in or on any public street, sidewalk, or park that is within three hundred (300) feet of any playground, school, or other facility when the facility is being used primarily by persons under eighteen (18) years of age.
 - (3) Any person convicted of violating subsections (1) or (2) of this section shall be punished by a fine of:

- i. Not more than One Hundred Dollars (\$100.00) for the first offense;
- ii. Not more than Two Hundred Dollars (\$200.00) for the second offense; and
- iii. Not more than Three Hundred Dollars (\$300.00) for a third or subsequent offense.

(4) Upon failure of any person to pay an administrative fine within ninety (90) days of the assessment of the fine, the Clerk of the Municipal Court shall notify the Department of Public Safety, and the Department shall suspend or not issue a driver license to the person until proof of payment has been furnished to the Department of Public Safety.

(e) Sale of tobacco products except in original, sealed packages

- (1) It is unlawful for any person to sell cigarettes except in the original, sealed package in which they were placed by the manufacturer.
- (2) Any person convicted of subsection (1) of this section shall be punished by a fine of not more than Two Hundred Dollars (\$200.00) for each offense.

(f) Publicly accessible display or sale of tobacco or vapor products

- (1) It is unlawful for any person or retail store to display or offer for sale tobacco products or vapor products in any manner that allows public access to the tobacco products or vapor products without assistance from the person displaying the tobacco products or vapor products or an employee or the owner of the store. The provisions of this subsection shall not apply to retail stores which do not admit into the store persons under eighteen (18) years of age.
- (2) Any person convicted of violating subsection (1) of this section shall be punished by a fine of not more than Two Hundred Dollars (\$200.00) for each offense.

(g) Notice of conviction to be provided to the ABLE Commission

Any information or reports required or requested by the Oklahoma Alcoholic Beverages Enforcement (ABLE) Commission shall be provided by the Clerk of the Municipal Court regarding the enforcement of any of violations found within this Section.

* * *

Sec. 15-506. Nuisance Party.

* * *

(b) A social gathering shall be deemed to constitute a public nuisance when, by reason of the conduct of persons in attendance, it results in three (3) or more of the following violations of the Code of the City of Norman, Oklahoma, and which violations occur at the site of the social gathering or on neighboring public or private property:

* * *

(3) Any of the following violations from Chapter 15 of the City Code:

* * *

viii. 15-412 Prevention of Youth Access to Tobacco and Vapor Products.

§5. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, except that the effective date provision shall not be severable from the operative provisions of the ordinance.

ADOPTED this _____ day
of _____, 2020.

NOT ADOPTED this _____ day
of _____, 2020.

Breea Clark, Mayor

Breea Clark, Mayor

ATTEST:

Brenda Hall, City Clerk