

**CITY OF NORMAN
ORDINANCE O-2425-12**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AMENDING THE TITLE OF SECTION 24-311 OF CHAPTER 24; AMENDING DEFINITIONS FOR THE PURPOSES THEREOF; PROHIBITING THE FURNISHING OF TOBACCO, NICOTINE AND VAPOR PRODUCTS TO ANYONE UNDER THE AGE OF TWENTY-ONE, PROHIBITING THE POSSESSION OF TOBACCO, NICOTINE AND VAPOR PRODUCTS BY ANYONE UNDER THE AGE OF TWENTY-ONE, PROHIBITING THE DISPLAY OR SALE OF TOBACCO, NICOTINE OR VAPOR PRODUCTS WHERE SELF-ACCESSIBLE BY ANYONE UNDER THE AGE OF TWENTY-ONE; AND PROVIDING FOR THE SEVERABILITY THEREOF.

WHEREAS, WHEREAS, in an effort to protect our youth from the negative health effects of tobacco, nicotine or vapor products, the State of Oklahoma has prohibited the sale or possession of tobacco, nicotine or vapor products for anyone under the age of twenty-one (21) years of age; and

WHEREAS, 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-2425-12.

NOW THEREFORE, be it ordained by the City Council of the City of Norman, in the State of Oklahoma, as follows:

SECTION 1:**AMENDMENT** "24-311 Prevention Of Youth Access To Tobacco And Vapor Products" of the City of Norman Municipal Code is hereby *amended* as follows:

AMENDMENT

24-311 Prevention Of Youth Access To Tobacco, Nicotine, And Vapor Products

- (a) *Definitions.* The following words, terms and phrases, when used in this **s**Section, shall have the meanings ascribed to them in this **s**Subsection, except where the context clearly indicates a different meaning:

Nicotine product means any product that contains nicotine extracted or isolated from plants, vegetables, fruit, herbs, weeds, genetically modified organic matter, or that is synthetic in origin and is intended for human consumption; provided, however, this term shall not include products approved by the United States Food and Drug Administration for smoking cessation. Person means any individual, firm, fiduciary,

partnership, corporation, trust, or association, however formed.

Proof of age means a driver's license, license for identification only, or other generally accepted means of identification that describes the individual as twenty-one (21) 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, nicotine 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's 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's license or other government-issued photo identification.

Vapor product means 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. The term "vapor product" 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. The term "vapor product" does 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 ~~T~~Tobacco ~~p~~Products, Nicotine Products or ~~v~~Vapor ~~p~~Products to ~~p~~Persons under the ~~a~~Age of Twenty-One (21) years.

(1) It shall be an offense for any person to sell, give or furnish in any manner any tobacco product, nicotine product or vapor product to another person who is under twenty-one (21) years of age, or to purchase in any manner a tobacco product, nicotine product or vapor product on behalf of any such person. It shall not be unlawful for an employee under twenty-one (21) years of age to handle tobacco products, nicotine 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, nicotine

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 twenty-one (21) years of age. If an individual engaged in the sale or distribution of tobacco products, nicotine products or vapor products has demanded proof of age from a prospective purchaser or recipient who is not under twenty-one (21) years of age, the failure to subsequently require proof of age shall not constitute a violation of this ~~s~~Subsection.

- (3) Any person convicted of violating ~~s~~Subsection (b)(1) or (2) of this ~~s~~Section shall be punished, as provided in 63 O.S. § 1-229.13.
- (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 ~~s~~Section. A person cited for violating this ~~s~~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:
 - a. The individual who purchased or received the tobacco product, nicotine product or vapor product presented a driver's license or other government-issued photo identification purporting to establish that such individual was twenty-one (21) years of age or older; or
 - b. The person cited for the violation confirmed the validity of the driver's 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 ~~s~~Section if the person failed to exercise reasonable diligence to determine whether the physical description and picture appearing on the driver's license or other government-issued photo identification was that of the individual who presented it. The availability of the defense described in this ~~s~~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, nicotine 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's license to the employee until proof of payment has been furnished to the Department of Public Safety.
- (c) *Possession of ~~t~~Tobacco ~~p~~Products, Nicotine Products or ~~v~~Vapor ~~p~~Products by ~~p~~Persons under the ~~a~~Age of Twenty-One (21) years.*
- (1) It shall be an offense for a person who is under twenty-one (21) years of age to purchase, receive, or have in ~~his~~their possession a tobacco product, nicotine 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, nicotine product or vapor product. It shall not

be unlawful for an employee under twenty-one (21) years of age to handle tobacco products, nicotine products or vapor products when required in the performance of the employee's duties.

(2) Any person convicted of violating sSubsection (c)(1) of this sSection shall be punished by a fine:

- a. Not to exceed ~~\$100~~50.00 for a first offense; and
- b. Not to exceed \$200.00 for ~~a second or~~ subsequent offenses 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's license to the individual until proof of payment has been furnished to the Department of Public Safety.

(d) *Distribution of ~~t~~Tobacco ~~p~~Products, Nicotine Products or ~~v~~Vapor ~~p~~Products and ~~p~~Product sSamples ~~r~~Restricted.*

(1) It shall be unlawful for any person or retailer to distribute tobacco products, nicotine products vapor products or product samples to any person under twenty-one (21) years of age.

(2) No person shall distribute tobacco products, nicotine products vapor products or product samples in or on any public street, sidewalk, or park that is within ~~300~~ three hundred (300) feet of any playground, school, or other facility when the facility is being used primarily by persons under twenty-one (21) years of age.

(3) Any person convicted of violating sSubsections (d)(1) or (2) of this sSection shall be punished by a fine of:

- a. Not more than \$100.00 for the first offense;
- b. Not more than \$200.00 for the second offense; and
- c. Not more than \$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's license to the person until proof of payment has been furnished to the Department of Public Safety.

(e) *Sale of ~~t~~Tobacco ~~p~~Products ~~e~~Except in ~~e~~Original, sSealed ~~p~~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 sSubsection (e)(1) of this sSection shall be punished by a fine of not more than \$200.00 for each offense.

(f) *Publicly ~~a~~Accessible ~~d~~Display or sSale of ~~t~~Tobacco, Nicotine or ~~v~~Vapor ~~p~~Products.*

(1) It is unlawful for any person or retail store to display or offer for sale tobacco products, nicotine products or vapor products in any manner that allows public access to the tobacco products, nicotine products or vapor products without assistance from the person displaying the tobacco products, nicotine products or vapor products or an employee or the owner of the store. The provisions of this sSubsection shall not apply to retail stores which do not admit into the

store persons under twenty-one (21) years of age.

Any person convicted of violating ~~s~~Subsection (f)(1) of this ~~s~~Section shall be (2) punished by a fine of not more than \$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 State 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.~~Enforcement.

(1) Any conviction for a violation of this Article and any compliance checks by a municipal police officer pursuant to Subsection (3) of this Section shall be reported in writing to the Alcoholic Beverage Laws Enforcement (ABLE) Commission within thirty (30) days of such conviction or compliance check. Such reports shall be compiled in the manner prescribed by the ABLE Commission. Convictions shall be reported by the Court Clerk or their designee and compliance checks shall be reported by the Chief of Police or their designee.

(2) For the purpose of determining second or subsequent violations, both the offenses penalized by the ABLE Commission as administrative fines and the offenses penalized by the City of Norman and reported to the ABLE Commission shall be considered together in such determination.

(3) Persons under twenty-one (21) years of age may be enlisted by the Police Department to assist in compliance checks and enforcement of this Article pursuant to the rules of the ABLE Commission.

(Code 1976, § 15-412; Ord. No. O-9697-58; Ord. No. O-9900-36; Ord. No. O-1920-46, § 3)

SECTION 2: SEVERABILITY CLAUSE Should any part or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinances a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

PASSED AND ADOPTED BY THE CITY OF NORMAN CITY COUNCIL

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AYE

NAY

ABSENT

ABSTAIN

Presiding Officer

Attest

Larry Heikkila, Mayor, City of
Norman

Brenda Hall, City Clerk, City of
Norman