

Ordinance # 958(20)

AN ORDINANCE OF THE CITY OF MOORE, OKLAHOMA AMENDING PART 10, OFFENSES AND CRIMES, CHAPTER 5, OFFENSES AGAINST THE PUBLIC, SECTION 10-517 PREVENTION OF YOUTH ACCESS TO TOBACCO, PROVIDING FOR REPEALER, PROVIDING FOR SEVERABILITY.

NOW THEREFORE, BE IT ORDAINED BY THE City Council of the City of Moore, Oklahoma:

Part 10, Chapter 5 shall be amended as follows, to-wit:

Sec 10-517 Prevention Of Youth Access To Tobacco

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

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 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 or vapor product distributed to members of the public at no cost for the purpose of promoting the product.

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 products 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 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. The term "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 or sale of tobacco products to minors.*

1. It shall be unlawful and 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 21 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 21 years of age to handle tobacco products or vapor product when required in the performance of the employee's duties.
2. Any 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 21 years of age. If an individual engaged in the sale or distribution of tobacco products or vapor products has demanded and was shown proof of age from a prospective purchaser or recipient who is not under 21 years of age, the failure to subsequently require proof of age shall not constitute a violation of this subsection.
3. If the sale of a tobacco product or vapor product to a minor is made by an employee of the owner of a store at which tobacco products are sold at retail, the employee shall be guilty of the violation and shall be subject to the fine. If employees of the owner of the store at which tobacco products or vapor products are sold at retail are found to be in violation of this section, the owner of the store, if the owner knew of the employee's previous violations, shall also be found to be in violation and shall be subject to an identical fine. An owner of a store licensed to sell tobacco products or vapor products shall not be deemed in violation of the provisions of subsection (b)(1) or (2) of this section for any acts constituting a violation by an employee of the store owner, if the violation occurred prior to actual employment of the person by the store owner, or the violation occurred at a location other than the owner's store.
4. Penalty. Any person violating the provisions of subsection (b)(1) or (2) of this section shall be guilty of an offense and, upon conviction, shall be punished by a fine in the amount of not less than \$25.00 nor more than \$200.00.
5. Record to be sent to the alcoholic beverage laws enforcement commission. Upon conviction for violating the provisions of subsection (b) (1) or (2) of this section, a report of the conviction of the person shall be forwarded by the municipal court clerk of the city to the alcoholic beverage laws enforcement ("ABLE") commission for possible administrative action.
6. Defenses. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age shall be a defense to prosecution under subsection (b) (1) or (2) of this section. A person cited for violation of this section shall be deemed to have reasonably relied upon proof of age, and such person shall not be found guilty of such violation, if such person proves that:

A The individual who purchased or received the tobacco product presented a driver's license or other government-issued photo identification purporting to establish that such individual was 21 years of age or older; and

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 section if such 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 subsection (6) does not affect the availability of any other defense under any other provision of law.

7. Notice to be sent to the department of public safety. Upon failure of the employee to pay the fine within 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. Upon failure of a store owner to pay the fine within 90 days of the assessment of such fine, the clerk of the municipal court shall notify the state tax commission and the state tax commission shall suspend the store's license to sell tobacco products until proof of payment has been furnished to the state tax commission.
8. For purposes of determining the liability of a person controlling franchises or business operations in multiple locations for any violation of subsection (b) (1) or (2) of this section, each individual franchise or business location shall be deemed a separate entity.

(c) Receipt of tobacco products or vapor products by minors.

1. It shall be unlawful and an offense for any person who is under 21 years of age to purchase, receive, or have in their 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. It shall not be unlawful for an employee under age 21 years of age to handle tobacco products when required in the performance of the employee's duties.
2. Penalty. Any person violating the provisions of subsection (c)(1) of this section shall be guilty of an offense and, upon conviction, shall be punished by a fine of:
 - A Not more than \$100.00, excluding costs, fees, and assessments, for a first offense; and
 - B Not more than \$200.00, excluding costs, fees, and assessments, for a second or subsequent offense within a one year period following the first offense.Upon failure of the individual to pay any fine within 90 days of the day of 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 individual until proof of payment has been furnished to the department of public safety.
3. The city shall establish rules to provide for notification to a parent or guardian of any minor cited for a violation of this section.

(d) Distribution of tobacco product or vapor product samples.

1. It shall be unlawful and an offense for any person to distribute tobacco product samples or vapor product samples to any person under 21 years of age.
2. Notwithstanding subsection (d)(1) of this section, no person shall distribute tobacco product samples or vapor product samples in or on any public street, sidewalk, or park that is within 300 feet of any playground, school, or other facility when the facility is being used primarily by persons under 21 years of age.
3. Penalty. Any person violating the provisions of subsection (d)(1) or (2) of this section shall be guilty of an offense and, upon conviction, shall be punished by a fine in the amount of not less than \$25.00 nor more than \$200.00.

4. Notice to be sent to the department of public safety. Upon failure of an individual to pay any fine within 90 days 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 individual until proof of payment has been furnished to the department of public safety.

(e) Sale of tobacco products except in original sealed package.

1. It is unlawful and an offense for any person to sell cigarettes except in the original, sealed package in which they were placed by the manufacturer.
2. Any person violating the provisions of subsection (e)(1) of this section shall be guilty of an offense and, upon conviction, shall be punished by a fine of not more than \$200.00, excluding costs, fees and assessments, for each offense.

(f) Signs in retail establishments required.

1. Every person who sells or displays tobacco products at retail shall post conspicuously and keep so posted at the place of business a sign, as specified by the alcoholic beverage laws enforcement (ABLE) commission, stating the following:

"IT'S THE LAW, WE DO NOT SELL TOBACCO PRODUCTS OR VAPOR PRODUCTS TO PERSONS UNDER 21 YEARS OF AGE."

The sign shall also provide the toll-free number operated by the alcoholic beverage laws enforcement (ABLE) commission for the purpose of reporting violations of the Prevention of Youth Access to Tobacco Act.

2. Any person violating the provisions of subsection (f)(1) of this section shall be guilty of an offense and, upon conviction, shall be punished by a fine of not more than \$50.00, excluding costs, fees and assessments, for each day a violation occurs. Each day a violation is continuing shall constitute a separate offense. The notice required by subsection (f)(1) of this section shall be the only notice required to be posted or maintained in any store that sells tobacco products at retail.

(g) Notice to retail employees.

1. Every person engaged in the business of selling tobacco products at retail shall notify each individual employed by that person as a retail sales clerk that state law:
 - A Prohibits the sale or distribution of tobacco products or vapor products to any person under 21 years of age and the purchase or receipt of tobacco products by any person under 21 years of age; and
 - B Requires that proof of age be demanded from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser or recipient may be under 21 years of age.

2. This notice shall be provided before the individual commences work as a retail sales clerk. The individual shall signify that he has received the notice required by this section by signing a form stating as follows:

"I understand that state law prohibits the sale or distribution of tobacco products or vapor products to persons under 21 years of age and out-of-package sales, and requires proof of age of purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser or recipient may be under 21 years of age. I promise, as a condition of my employment, to obey the law. I understand that violations by me may be punishable by fines, suspension, or non-issuance of my driver's license. In addition, I understand that violations by me may subject the store owner to fines or license suspension."

(h) *Vending machine sales restricted.*

1. It shall be unlawful for any person to sell tobacco products or vapor products through a vending machine unless the vending machine is located:
 - A In areas of factories, businesses, offices, or other places that are not open to the public; or
 - B In places that are open to the public, but to which persons under 21 years of age are not admitted.
2. Any person violating the provisions of subsection (h)(1) of this section shall be guilty of an offense and, upon conviction, shall be punished by a fine of not more than \$200.00, excluding costs, fees and assessments, for each offense.

(i) *Display or sale of tobacco 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 product without assistance from the person displaying the tobacco product or vapor product 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 21 years of age.
2. Any person violating the provisions of subsection (i)(1) of this section shall be guilty of an offense and, upon conviction, shall be punished by a fine of not more than \$200.00, excluding costs, fees and assessments, for each offense.

(j) *Prohibiting possession or sale of tobacco use device or material.*

1. It is unlawful for any person who is under 21 years of age to possess any material or device used in the smoking, chewing, or other method of consumption of tobacco, including cigarette papers, pipes, holders of smoking materials or all types, and other items designed primarily for the smoking or ingestion of tobacco products.
2. It is unlawful for any person to sell, give or furnish in any manner to another person who is under 21 years of age any material or device used in the smoking, chewing, or other method of consumption of tobacco or vapor products, including cigarette papers, pipes, holders of smoking materials or all types, and other items designed primarily for the smoking or ingestion of tobacco products.

3. Any person violating the provisions of subsection (j)(1) or (2) of this section shall be guilty of an offense and, upon conviction, shall be punished by a fine of not more than \$200.00, excluding costs, fees and assessments, for each offense.

(k) Restrictions on manner of enforcement.

1. Any conviction for a violation of subsections (b) through (i) of this section and compliance checks conducted by the city pursuant to subsection (k)(2) of this section shall be reported in writing to the alcoholic beverage laws enforcement (ABLE) commission within 30 days of the conviction or compliance check. Such reports shall be compiled in the manner prescribed by the ABLE commission.
2. Persons under 21 years of age may be enlisted by the city to assist in enforcement of subsections (b) through (i) of this section, provided such persons may be used to test compliance only if written parental consent has been provided and the testing is conducted under the direct supervision of the alcoholic beverage laws enforcement (ABLE) commission or conducted by another law enforcement agency if such agency has given written notice to the ABLE commission in the manner prescribed by the ABLE commission. The city may conduct, pursuant to rules of the ABLE commission, compliance checks without prior notification to the ABLE commission and shall be exempt from the written notice requirement of this subsection. This subsection shall not apply to the use of persons under 21 years of age to test compliance if the compliance test is being conducted by or on behalf of a retailer of cigarettes, as defined in 68 O.S. § 301, at any location the retailer of cigarettes is authorized to sell cigarettes.

Severability. If any of the provisions of this ordinance are determined to be unconstitutional or unlawful by any court of competent jurisdiction, the remainder shall be severable and unaffected.

Repealer. Any ordinance or parts thereof in conflict with this section are hereby repealed.

PASSED AND APPROVED THIS 21 DAY OF DECEMBER, 2020.



ATTEST:

Vanessa Kemp
VANESSA KEMP, City Clerk

Glenn Lewis
GLENN LEWIS, Mayor

APPROVED AS TO FORM AND LEGALITY:

Randy C. Brink
RANDY C. BRINK, City Attorney