

ORDINANCE NO. 769

AN ORDINANCE AMENDING SECTION 10-419 TO THE COWETA CODE OF ORDINANCES, PREVENTION OF NICOTINE ADDICTION AMONG YOUTH, ESTABLISHING WHAT CONDUCT IS UNLAWFUL AND THE PENALTIES THAT MAY BE IMPOSED, REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH, AND DECLARING AN EMERGENCY

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COWETA, OKLAHOMA, THAT, TO-WIT:

1. SECTION 10-419: Part 10, Offenses and Crimes, Chapter 4, of the Code of Ordinances of the City of Coweta, Oklahoma, shall be amended as follows:

2. SECTION 10-419 shall consist of the following sub-parts:

A. FINDINGS AND INTENT

The City Council finds that youth addiction to tobacco products is a public health problem with grave health consequences. In recognition that almost 90 percent of all smokers begin smoking by the age of 18, action is needed to curtail the easy access of minors to cigarettes and other addictive tobacco products. Furthermore, the City Council finds that the Oklahoma State Legislature has limited the powers granted to local governments to address the problem of youth access to tobacco. Therefore, the intent of this ordinance is to: (1) implement the strictest and most enforceable system allowed under Oklahoma state law to prevent the illegal sale of cigarettes and other tobacco or vapor products to minors; (2) periodically amend and update this ordinance as necessary to best utilize any applicable powers which may be returned to Oklahoma municipalities in the future; and (3) educate, encourage and assist underage tobacco users in ceasing all use of addictive tobacco or vapor products, preferable before daily use of such products is initiated.

B. TOBACCO AND VAPOR PRODUCT TO MINORS-DEFINITIONS

As used in this section:

1. "Person" means any individual, firm, fiduciary, partnership, corporation, trust, or association, however formed.
2. "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.
3. "Sample" means a tobacco product distributed to members of the public at no cost for the purpose of promoting the product.
4. "Sampling" means the distribution of samples to members of the public in a public place.

5. "Tobacco product" means any product that contains tobacco and is intended for human consumption.
6. "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.
7. "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.
8. "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. "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. "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.

C. FURNISHING, GIVING OR SALE OF TOBACCO PRODUCTS AND VAPOR PRODUCTS TO MINORS

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

B. A person engaged in the sale or distribution of tobacco, tobacco product or vapor product 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 might be less than eighteen (18) years of age.

If an individual engaged in the sale or distribution of tobacco, tobacco product or vapor product has demanded proof of age from a prospective purchaser or recipient who is not less than eighteen (18) years of age, the failure to subsequently require proof of age shall not constitute a violation of subsection B of this section.

1. When a person violates subsection A or B of this section, he or she shall be guilty of an offense and, upon conviction, shall be punished by a fine as follows:

- a. Not more than One Hundred Dollars (\$100.00) for the first offense.
- b. Not more than Two Hundred Dollars (\$200.00) for the second offense within a two-year period following the first offense.
- c. Not more than Three Hundred Dollars (\$300.00) for a third offense within a two-year period following the first offense. In addition to any other penalty, the store's license to sell tobacco products may be suspended for a period not exceeding thirty (30) days.

d. Not more than Three Hundred Dollars (\$300.00) for a fourth or subsequent offense within a two-year period following the first offense. In addition to any other penalty, the store's license to sell tobacco products may be suspended for a period not exceeding sixty (60) days.

2. Pursuant to State law, when it has been determined by a municipal court that a penalty shall include a license suspension, the ABLE Commission will notify the Oklahoma Tax Commission, and the Tax Commission will suspend the store's license to sell tobacco products at the location where the offense occurred for the period of time prescribed by the ABLE Commission.

3. 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 such violation, if such person proves that:

- a. The individual, who purchased or received the tobacco, 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, and,
- b. 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.

C. 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 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.

D. If the sale is made by an employee of the owner of a store at which tobacco, tobacco product or vapor product are sold at retail, the employee shall be guilty of the violation and shall be subject to the fine. Each violation by any employee of an owner of a store licensed to sell tobacco products shall be deemed a violation against the owner for purposes of a license suspension pursuant to subsection C of this section. An owner of a store licensed to sell tobacco products shall not be deemed in violation of this section for any acts constituting a violation by any person, when the violation occurs prior to actual employment of the person by the store owner or the violation occurs at a location other than the owner's retail store. For purposes of determining the liability of a person controlling franchises or business operations in multiple locations, for any violations of subsection A or B of this section, each individual franchise or business location shall be deemed a separate entity.

E. 1. Upon failure of the employee to pay the fine within ninety (90) days of the day of the assessment of such fine, the Municipal Court clerk shall notify the Department of Public Safety and the Department will, pursuant to State law, suspend or not issue a driver's license to the employee until proof of payment has been furnished to the Department of Public Safety.

2. Upon failure of a storeowner to pay the administrative fine within ninety (90) days of the assessment of the fine, the clerk of the municipal court shall notify the Oklahoma Tax Commission and the Tax Commission shall suspend the store's license to sell tobacco products until proof of payment has been furnished to the Oklahoma Tax Commission.

D. RECEIPT OF TOBACCO PRODUCTS OR VAPOR PRODUCTS BY A MINOR

A. It is unlawful for a person who is less than eighteen (18) years of age to purchase, receive or accept receipt of, or have in their possession, tobacco, tobacco product or vapor product, or to present or offer to any person any purported proof of age which is false or fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco, tobacco product or vapor product. Provided, however, it shall not be unlawful for such a person or employee who is less than eighteen (18) years of age to handle such tobacco, tobacco product or vapor product when required in the performance of such person's the employee's duties.

B. When a person violates subsection A of this section he or she shall be guilty of an offense and, upon conviction, shall be punished by a fine of:

1. Not to exceed One Hundred Dollars (\$100.00) for a first offense; and,
2. Not to exceed Two Hundred Dollars (\$200.00) for a second or subsequent offense within a one-year period following the first offense.

Upon failure of the individual to pay such fine within ninety (90) days of the day of such fine, the Municipal Court clerk shall notify the Department of Public Safety and, by operation of State law, 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.

E. PROPER SIGNAGE REQUIRED

A. Every person who sells or displays retail tobacco, tobacco product or vapor product 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 OR VAPOR PRODUCTS TO PERSONS UNDER 18 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.

B. When a person violates subsection A of this section he or she shall be guilty of an offense and upon conviction shall be punished by a fine of not more than Fifty Dollars (\$50.00) for each day a violation occurs. Each day a violation is continuing shall constitute a separate offense. The notice required by subsection A of this section shall be the only notice required to be posted or maintained in any store that sells tobacco, tobacco product or vapor product at the retail level.

F. NOTICE TO RETAIL EMPLOYEES

A. Every person engaged in the business of selling tobacco, tobacco product or vapor product at a retail store shall notify each individual employed by that person as a retail sales clerk that state and local law:

1. Prohibits the sale or distribution of tobacco, tobacco product or vapor product to any person under eighteen (18) years of age and the purchase or receipt of tobacco, tobacco product or vapor product by any person under eighteen (18) years of age; and,
2. 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 less than eighteen (18) years of age.

B. This notice shall be provided before the individual commences work as a retail sales clerk. The individual shall signify that he or she has received the requisite notice by reading and signing a notice stating the following:

"I understand that state law prohibits the sale or distribution of tobacco, tobacco product or vapor product to persons less than eighteen (18) 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 eighteen (18) 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 license. In addition, I understand that violations by me may subject the storeowner to fines or license suspension."

G. LIMITED ACCESS TO VENDING MACHINES

It shall be unlawful for any person to sell tobacco, tobacco product or vapor product through a vending machine unless the vending machine is located:

1. In areas of factories, businesses, offices or other places that are not open to the public; and,
2. In places that are open to the public, but to which persons under eighteen (18) years of age are not admitted.

H. DISTRIBUTION OF TOBACCO PRODUCT OR VAPOR PRODUCT SAMPLES

A. It shall be unlawful for any person or retailer to distribute tobacco, tobacco product or vapor product or product samples to any person under eighteen (18) years of age.

B. No person shall distribute tobacco, tobacco product or vapor product 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.

C. When a person violates any provision of subsection A or B of this section, he or she shall be guilty of an offense and, upon conviction, shall be punished by a fine of:

1. Not more than One Hundred Dollars (\$100.00) for the first offense.
2. Not more than Two Hundred Dollars (\$200.00) for the second offense.
3. Not more than Three Hundred Dollars (\$300.00) for a third or subsequent offense.

D. Upon failure of any individual to pay an administrative fine within ninety (90) days of the assessment of such fine, the Municipal Court clerk shall notify the Department of Public Safety, and the Department, pursuant to State law, 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.

I. SALE OF TOBACCO PRODUCTS OR VAPOR PRODUCTS EXCEPT IN ORIGINAL SEALED PACKAGE

A. It is unlawful for any person to sell tobacco, tobacco product or vapor product except in the original, sealed package in which they were placed by the manufacturer.

B. When a person violates subsection A of this section, the Municipal Court clerk shall assess such person an administrative fine of not more than Two Hundred Dollars (\$200.00) for each offense.

J. NO PUBLIC ACCESS OF TOBACCO, TOBACCO PRODUCTS OR VAPOR PRODUCTS

A. It is unlawful for any person or retail store to display or offer for sale tobacco, tobacco product or vapor product in any manner that allows public access to the product without assistance from the person displaying the 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 eighteen (18) years of age.

B. When a person violates subsection A of this section he or she shall be guilty of an offense and, upon conviction, shall be punished by a fine of not more than Two Hundred Dollars (\$200.00) for each offense.

K. RESTRICTIONS ON MANNER OF ENFORCEMENT

A. Any conviction for a violation of any section within this chapter and any negative results from compliance checks performed by a police officer pursuant to subsection C of this section shall be reported in writing to the 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.

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

C. Persons under eighteen (18) years of age may be enlisted by the City to assist in conducting compliance checks and enforcement; 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 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. This subsection shall not apply to the use of persons under eighteen (18) years of age to test compliance if the test is being conducted by or on behalf of a retailer of cigarettes, as defined in Section 301 of Title 68 of the Oklahoma Statutes, at any location the retailer of cigarettes is authorized to sell cigarettes. Use of persons under eighteen (18) years of age to test compliance shall be unlawful and punishable by assessment of an administrative fine of One Hundred Dollars (\$100.00).

L. TRANSFER OF ANY MATERIAL OR DEVICE USED IN SMOKING, CHEWING OR CONSUMPTION OF TOBACCO TO MINORS PROHIBITED - ADMINISTRATIVE FINE FOR VIOLATIONS

A. It is unlawful for any person to sell, give or furnish in any manner to another person who is under eighteen (18) years of age any material or device used in the smoking, chewing, or other method of consumption of tobacco, including cigarette papers, pipes, holders of smoking materials of all types, and other items designed primarily for the smoking or ingestion of tobacco products.

B. When a person violates subsection A of this section, an administrative fine of not more than One Hundred Dollars (\$100.00) for each offense may be imposed upon the person.

M. INCREASE OF FINES; FEE SCHEDULE

All fines set forth within this ordinance may be increased, to the extent allowed by state law, by resolution since it is not necessary to amend this ordinance each time the municipality deems it timely to increase fines and fees. The Chief of Police shall maintain a current schedule of all fees allowed under this chapter in the Police Department.

N. SEVERABILITY

If any part or parts of this ordinance are deemed unconstitutional, invalid or ineffective, the remaining portion shall not be affected but shall remain in full force and effect.

O. REPEALER

All ordinances or parts of ordinances, in conflict with this newly created chapter are hereby repealed to the extent of the conflict only.

An emergency exists for the preservation of the public health, peace and safety, and therefore, this Ordinance shall become effective from and after the time of its passage and approval.

PASSED by the City Council of the City of Coweta, Oklahoma, on the 1st day of February, 2016.





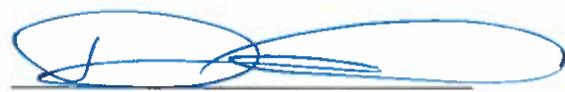
Robert Morton, Mayor

ATTEST:



Brittany Long, City Clerk

APPROVED AS FOR FORM:



David Weatherford, City Attorney