

ORDINANCE NO. 2022- 3- 1**AN ORDINANCE AMENDING THE TOWN OF WELLSTON CODE OF ORDINANCES, PART 8: HEALTH AND SANITATION BY CREATING CHAPTER 5: YOUTH ACCESS TO TOBACCO SECTIONS 8-501 THROUGH 8-505; AND REPEALING ALL CONFLICTING ORDINANCES.**

WHEREAS, the Town Board of the Town of Wellston has determined that it is necessary to establish regulations prohibiting youth access to tobacco within the Town of Wellston.

NOW, THEREFORE BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF WELLSTON, OKLAHOMA, that

SECTION 1. The Town of Wellston Code of Ordinances, Part 8: Health and Sanitation is amended by creating Chapter 5: Youth Access to Tobacco as follows:

CHAPTER 5: YOUTH ACCESS TO TOBACCO**SECTION 8-501: DEFINITIONS**

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

- a) **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;
- b) **Person:** means any individual, firm, fiduciary, partnership, corporation, trust, or association, however formed;
- c) **Proof of age:** means a driver 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;
- d) **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;
- e) **Sampling:** means the distribution of samples to members of the public in a public place;
- f) **Tobacco product:** means any product that contains tobacco and is intended for human consumption;

g) **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;

h) **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;

i) **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. "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.

SECTION 8-502: UNLAWFUL TO SELL OR FURNISH TOBACCO, NICOTINE OR VAPOR PRODUCT TO PERSONS UNDER TWENTY-ONE YEARS OF AGE

a) It is unlawful for any person to sell, give or furnish in any manner any tobacco, tobacco product or vapor product (see definition) to another person who is under twenty-one (21) years of age, or to purchase in any manner tobacco, a tobacco products 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, tobacco products or vapor products when required in performance of the employee's duties.

b) A person engaged in the sale or distribution of tobacco, 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 less than twenty-one (21) years of age. If an individual engaged in the sale or distribution of tobacco, tobacco 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 subsection.

c) Any violation of subsection a or b of this article is an offense against the Town of Wellston; upon conviction of any such offense, the violator shall be punished as follows:

- (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 within a two-year period following the first offense;

- (3) Not more than Three Hundred Dollars (\$300.00) for the 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 or nicotine products or the store's sales tax permit for a store that is predominantly engaged in the sale of vapor products in which the sale of other products is merely incidental may be suspended for a period not exceeding thirty (30) days,
 - (4) 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 or the store's sales tax permit for a store that is predominantly engaged in the sale of vapor products in which the sale of other products is merely incidental may be suspended for a period not exceeding sixty (60) days.
- d) 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:
- (1) 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 twenty-one (21) years of age or older; or
 - (2) 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.

SECTION 8-503: DISTRIBUTION OF TOBACCO PRODUCT AND VAPOR PRODUCT SAMPLES.

- a) It shall be unlawful for any person or retailer to distribute tobacco, tobacco products, tobacco or tobacco product samples or vapor products samples to any person under twenty-one (21) years of age.
- b) No person shall distribute tobacco, tobacco product or vapor 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 twenty-one (21) years of age.

c) When a person is convicted or enters a plea and receives a continued sentence for a violation of subsections (a) or (b) of this section, the total of any fines, fees, or costs shall not exceed the following:

- (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; and
- (3) Not more than Three Hundred Dollars (\$300.00) for the third or subsequent offense.

SECTION 8-504: PUBLIC ACCESS TO DISPLAYED TOBACCO, NICOTINE OR VAPOR PRODUCTS.

a) It is unlawful for any person or retail store to display or offer for sale tobacco products, including loosies, or vapor products in any manner that allows public access to the tobacco product or vapor products without assistance from the person displaying the tobacco product 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 twenty-one (21) years of age.

b) When a person is convicted or enters a plea and receives a continued sentence for a violation of this section, the total of any fines, fees, or costs shall not exceed Two Hundred Dollars (\$200.00) for each offense.

SECTION 8-505: ENFORCEMENT.

a) Any conviction for a violation of this Article and any compliance checks conducted by the Police Department pursuant to Subsection (c) of this section shall be reported in writing to the Alcoholic Beverage Laws Enforcement (ABLE) Commission within thirty (30) days of the 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 her designee and compliance checks shall be reported by the Chief of Police or his designee.

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 by the municipality and reported to the ABLE Commission, shall be considered together in such determination.

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

SECTION 2. That all other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of any such conflict or inconsistency and all other ordinances not in conflict herewith shall remain in full force and effect.


SECTION 3. The provisions of this Ordinance are severable, and if any part or provision hereof shall be adjudged invalid by any court of competent jurisdiction, such adjudication shall not affect or impair any of the remaining parts or provisions hereof.

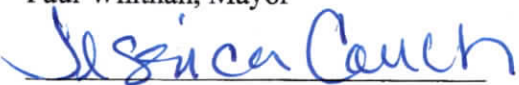
ADOPTED AND APPROVED on this 10th day of March 2022.

TOWN OF WELLSTON, OKLAHOMA

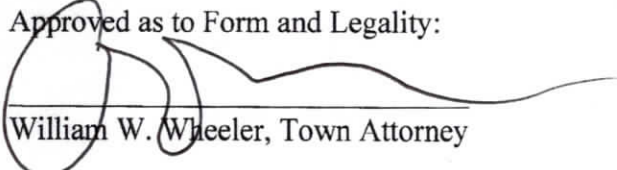
A Municipal Corporation

ATTEST: (Seal)


Paul Whitnah, Mayor


Jessica Couch, City Clerk

Approved as to Form and Legality:


William W. Wheeler, Town Attorney

