

ORDINANCE NO. 12
Series of 2019

AN ORDINANCE OF THE TOWN OF CARBONDALE, COLORADO AMENDING CHAPTER 6 OF THE MUNICIPAL CODE OF THE TOWN OF CARBONDALE TO ESTABLISH LICENSING REQUIREMENTS FOR THE RETAIL SALE OF TOBACCO PRODUCTS AND FURTHER REGULATING THE SALE OF TOBACCO PRODUCTS, AMENDING CHAPTER 6, ARTICLE 7 REGARDING SUSPENSION, REVOCATION, OR NONRENEWAL OF CERTAIN LICENSES, AND AMENDING CHAPTER 10, ARTICLE 6 REGARDING THE MINIMUM AGE FOR THE PURCHASE, POSSESSION, AND CONSUMPTION OF TOBACCO PRODUCTS AND THE MINIMUM AGE FOR THE PURCHASE, POSSESSION, AND CONSUMPTION OF ELECTRONIC SMOKING DEVICES AND RELATED SUBSTANCES

WHEREAS, Article XX of the Colorado Constitution grants to home rule municipalities “every power theretofore possessed by the legislature to authorize municipalities to function in local and municipal affairs;” and

WHEREAS, the Town of Carbondale (the “Town”) is a home rule municipal corporation organized under the laws of the State of Colorado and possessing the maximum powers and authority and privileges to which it is entitled under Colorado law; and

WHEREAS, the Centers for Disease Control and Prevention has reported a more than 800% increase in electronic cigarette use among middle school and high school students between 2011 and 2015; and

WHEREAS, approximately 96 percent of smokers begin smoking before age 21,ⁱ with most beginning before age 16, “and smokers frequently transition from experimentation to addiction between the ages of 18 and 21;”ⁱⁱⁱ and

WHEREAS, youth use of e-cigarettes and similar products is associated with future cigarette use;^{iv} and

WHEREAS, 81% of youth who have ever used a tobacco product report that the first tobacco product was flavored; and

WHEREAS, flavored tobacco products promote youth initiation of tobacco use and help young, occasional smokers to become daily smokers by reducing or masking the natural harshness and taste of tobacco increasing the appeal of tobacco products; and

WHEREAS, young people are more likely than adults to use menthol-, candy- and fruit-flavored tobacco products, including cigarettes, electronic smoking devices, cigars, cigarillos, and hookah tobacco; and

WHEREAS, in 2019 the Colorado General Assembly enacted House Bill 19-1033 which removed certain restrictions and penalties on local government regulation of tobacco products; and

WHEREAS, the requirement for a tobacco retail license will not unduly burden legal business activities of retailers who sell tobacco products; and

WHEREAS, the Town finds that these regulations, including licensing requirements for tobacco product retailers and prohibitions on flavored tobacco product sales, are appropriate and necessary to protect the health, safety, and welfare of the citizens of the Town.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO that the Town of Carbondale Municipal Code shall be amended as follows:

1. The foregoing recitals are hereby adopted as findings and determinations of the Board of Trustees.

2. A new Article 9, Tobacco Product Retail License, shall be added to Chapter 6 of the Town of Carbondale Municipal Code regarding sales tax licenses and regulations. The new Article 9 shall read as follows:

Sec. 6-9-10. Purpose and intent.

The purpose of this Article is to establish license requirements for tobacco product retailers, to encourage responsible tobacco product retailing, to discourage sale or distribution of tobacco products to individuals under the age of 21, and to prohibit the sale of flavored tobacco products.

Sec. 6-9-20. Definitions.

The following words and phrases, as used in this Article, shall have the following meanings:

Accessory means any product that is intended or reasonably expected to be used with or for the human consumption of a tobacco product; does not contain tobacco and is not made or derived from tobacco; and meets either of the following: (1) is not intended or reasonably expected to affect or alter the performance, composition, constituents, or characteristics of a tobacco product; or (2) is intended or reasonably expected to affect or maintain the performance, composition, constituents, or characteristics of a tobacco product but (a) solely controls moisture and/or temperature of a stored tobacco product; or (b) solely provides an external heat source to initiate but not maintain combustion of a tobacco product. Accessory includes, but is not limited to, carrying cases, lanyards and holsters.

Characterizing flavor means a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, spice; provided, however, that a tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a

distinguishable taste or aroma or both, as described in the first sentence of this definition that constitutes a characterizing flavor.

Cigarettes mean any product that contains tobacco or nicotine, including, but not limited to, premanufactured cigarettes and/or hand-rolled cigarettes, that is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

- (1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;
- (2) Tobacco in any form that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to, or purchased by consumers as a cigarette; or
- (3) Any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (1) above.
- (4) The term includes all “roll-your-own,” i.e., any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes.

Component or part means any software or assembly of materials intended or reasonably expected: (1) to alter or affect the tobacco product’s performance, composition, constituents, or characteristics; or (2) to be used with or for the human consumption of a tobacco product or electronic smoking device. Component or part excludes anything that is an accessory, and includes, but is not limited to e-liquids, cartridges, certain batteries, heating coils, programmable software and flavorings for electronic smoking device.

Constituent means any ingredient, substance, chemical or compound other than tobacco, water or a reconstituted tobacco sheet that is added by the manufacturer to a tobacco product during the processing, manufacturer or packaging of a tobacco product.

Distinguishable means perceivable by either the sense of smell or taste.

Electronic smoking device means any product containing or delivering nicotine intended for human consumption that can be used by an individual to simulate smoking in the delivery of nicotine or any other substance, even if marketed as nicotine-free, through inhalation from the product. Electronic smoking device includes any refill, cartridge or component part of a product, whether or not marketed or sold separately. Electronic smoking device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco cessation product or for other medically approved or certified purposes.

Flavored tobacco product means any tobacco product that contains a constituent or that imparts a characterizing flavor.

Ingredient means any substance, chemical or compound, other than tobacco, water, reconstituted tobacco sheets that are added by the manufacturer to a tobacco product during the processing, manufacture or packaging of the tobacco product.

License refers to the tobacco product retail license.

Licensee means the owner or holder of a tobacco product retail license.

Licensing administrator means the person(s) within the Town government designated with responsibilities by the Town Manager for license issuance, renewal, and collection of fees.

Minimum legal sales age means twenty-one (21) years of age or older.

Mobile vending means any sales other than at a fixed location.

Person means natural person, a joint venture, joint-stock company, partnership, association, firm, club, company, corporation, business, trust or organization, or the manager, lessee, agent, servant, officer or employee of any of them.

Self-service display means the open display or storage of tobacco products in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employer of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine or other coin-operated machine are forms of a self-service display.

Tobacco paraphernalia means any item designed for the consumption, use, or preparation of tobacco products.

Tobacco product means (1) any product which contains, is made, or derived from tobacco or used to deliver nicotine or other substances intended for human consumption, whether smoked, heated, chewed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, bidis, snus, mints, hand gels, Cavendish, plug and twist tobacco, fine cut and other chewing tobaccos, shorts, refuse scraps, clippings, cutting, and sweepings of tobacco; (2) electronic smoking devices; (3) notwithstanding any provision of subsections (1) and (2) to the contrary, "tobacco product" includes any component, part, accessory, or associated tobacco paraphernalia of a tobacco product whether or not sold separately. Excluded from this definition is any product that contains marijuana and any products specifically approved by the U.S. Food and Drug Administration for use in reducing, treating, or eliminating nicotine or tobacco dependence or for other medical purposes when these products are being marketed and sold solely for such approved purpose.

Tobacco product retail location means any premises where tobacco products or tobacco paraphernalia are sold or distributed to a consumer, including, but not limited to, hookah bar, lounge, or cafe, any grounds occupied by a retailer, any store, stand, outlet, vehicle, cart, location, vending machine, or structure where tobacco products are sold.

Tobacco product retailer means any person who sells, offers for sale, or does or offers to exchange for any form of consideration tobacco products or tobacco paraphernalia. *Tobacco product retailing* means the doing of any of these things. This definition is without regard to the quantity of tobacco products or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

Vending machine shall mean any mechanical, electrical, or electronic self-service device which, upon insertion of money, tokens, or any other form of payment dispenses product.

Sec. 6-9-30. License required.

- (a) It shall be unlawful for any person to act as a tobacco product retailer in the Town unless he or she has obtained a license and maintains the same in full force and effect pursuant to this Article for each location where tobacco product retailing occurs.
- (b) No license shall be issued to authorize tobacco product retailing anywhere other than at a fixed location within the Town that is designated in the license application and approved by the Licensing Administrator. Tobacco product retailing by persons on foot, from vehicles, or through mobile vending is prohibited.
- (c) No licenses within 500 feet of schools. No licenses shall be issued to retailers located within 500 feet from any public or parochial school as determined by the Town Manager or his or her designee. This restriction shall not apply to an existing tobacco product retail location within 500 feet of a school as of the effective date of this Ordinance, but a license for such location shall not be transferable.
- (d) No licenses shall be issued to applicants under the minimum legal sales age.
- (e) All tobacco product retailers must submit an application for a license within 45 days of the effective date of this Ordinance.

Sec. 6-9-40. Conditions of the tobacco product retail license.

- (a) Display of license. Each license shall be prominently displayed in a publicly visible location at the licensed tobacco product retail location.
- (b) Display of minimum legal sales age requirements. The requirement of the minimum legal sales age for the purchase of tobacco retail products shall be prominently displayed in the entrance (or other clearly visible location) of the tobacco product retail location. Said warning signs shall have a minimum height of three inches and a width of six inches, and shall read as follows:

WARNING

IT IS ILLEGAL TO SELL TOBACCO PRODUCTS TO ANY PERSON UNDER 21 YEARS OF AGE AND IT IS ILLEGAL FOR ANY PERSON UNDER 21 YEARS OF AGE TO PURCHASE TOBACCO PRODUCTS

- (c) Locations. A tobacco product retail location may only have one active license at one time. Every license is separate and distinct and specific to a designated location.
- (d) Minimum age for persons handling tobacco products. A person under the age of 21 may, while employed at a tobacco product retail location, possess or handle tobacco products or tobacco paraphernalia as part of that individual's employment at a tobacco product retail location, so long as such individual does not sell or provide tobacco products to a person under the age of 21.
- (e) Prohibition of self-service displays. No licensee shall sell or permit the sale of tobacco products by use of a self-service display. Licensees shall stock and display all tobacco products in a manner so as to make all such products inaccessible to customers without the assistance of a retail clerk, thereby requiring a direct face-to-face exchange of the tobacco products from an employee of the business to the customer.
- (f) Prohibition on flavored tobacco sales. Licensees shall not sell, offer for sale, or possess with the intent to sell any flavored tobacco product(s). This prohibition shall take effect 30 days after the effective date of this Ordinance. Any sale of flavored tobacco product(s) after that date will be a violation of this Article.
- (g) Requirements of positive identification. No person engaged in tobacco product retailing shall sell or transfer a tobacco product or tobacco paraphernalia to another person who appears to be under the age of forty (40) years without first examining the government-issued photographic identification of the recipient to confirm that the recipient is at least the minimum legal sales age.

Sec. 6-9-50. Application procedure.

- (a) All license applications shall be filed with the Town Clerk. An application for a license or a new application for a transfer of a license shall be submitted and signed by an individual authorized by the person or entity making application for the license. It is the responsibility of each applicant and/or licensee to be informed regarding all laws applicable to tobacco retailing, including those laws affecting the issuance of said license. No applicant and/or licensee may rely on the issuance of a license as a determination by the Town that the proprietor has complied with all applicable tobacco retailing laws.
- (b) All applications shall be submitted on a form supplied by the Town Clerk.

- (c) A licensed tobacco product retailer shall inform the Town Clerk in writing of any change in the information submitted on an application for a license within thirty (30) business days of a change.
- (d) All license applications shall be accompanied by the payment in full of all fees as set forth in the Fee Schedule attached as Appendix A to this Code.

Sec. 6-9-60. Issuance of a retail license.

- (a) The Licensing Administrator shall consider and act upon all complete applications filed with the Town Clerk in accordance with the standards and procedures set forth in this Article.
- (b) Upon the receipt of a completed application for a tobacco product retail license and the paid license fee pursuant to this Article, the Licensing Administrator shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:
 - (1) The information presented in the application is incomplete, inaccurate, or false;
 - (2) The applicant seeks authorization for a license at a location where this Article prohibits the issuance of a license;
 - (3) The applicant seeks authorization for a license and the applicant's current license is suspended or revoked;
 - (4) The applicant is not qualified to hold the requested license under the provisions of this Article;
 - (5) The applicant and/or retail location is not in full compliance with this Article or all applicable Town, state, or federal laws and regulations.
- (c) If the Licensing Administrator denies the issuance of the license, the Town Clerk shall notify the applicant in writing by regular mail postage prepaid on the address shown in the application. The notice shall include the grounds for denial. Notice is deemed to have been properly given upon mailing.
- (d) An applicant has the right to appeal the Licensing Administrator's denial of an application to the Board of Trustees. Such an appeal shall be initiated by filing a written request with the Town Clerk within twenty (20) days of the date of the notice of denial of the issuance of a license.
- (e) The applicant's failure to timely appeal the decision of the Licensing Administrator is a waiver of the applicant's right to contest the denial of the issuance of the license.

Sec. 6-9-70. License term, expiration, renewal.

- (a) Term. All licenses issued under this Article shall be effective for the period of one (1) year from the date of issuance. For a tobacco product retailer that also holds a current liquor license pursuant to Chapter 6, Article 1 of this Code, the term length and applicable fees of the initial term of tobacco product retail license shall be prorated, and the tobacco product retail license shall be renewed contemporaneously with the next renewal of the retailer's liquor license.
- (b) Renewal of license. A licensee shall apply for the renewal of the license and submit the renewal license fee, as set forth in the Fee Schedule attached as Appendix A to this Code, no later than thirty (30) days prior to expiration of the existing term. The Licensing Administrator shall renew the license prior to the end of the term, provided that the renewal application and fee were timely submitted, and the Licensing Administrator is not aware of any fact that would have prevented issuance of the original license or issuance of the renewal.
- (c) Expiration of license. A license that is not timely renewed shall expire at the end of its term. The failure to timely obtain a renewal of a license requires submission of a new application. There shall be no sale of any tobacco products after the license expiration date and before the new license is issued.

Sec. 6-9-80. Transfers.

A license may be transferred from one person to another or from one location to another. However, a transfer may not occur if the license to be transferred is out of compliance with any applicable Code provision, the transferee does not qualify to hold the transferred license under the provisions of this Article, and/or the transferee and/or new retail location is not in full compliance with this Article or all applicable Town, state, or federal laws and regulations.

Sec. 6-9-90. Compliance monitoring.

The Carbondale Police Department may at its discretion conduct compliance checks, including the use of decoys, to determine compliance with this section and with other laws applicable to tobacco products. The failure of two compliance checks, performed either by the Carbondale Police Department or the State of Colorado, in one calendar year shall be grounds for suspension of the license pursuant to Chapter 6, Article 7, and the failure of three compliance checks, performed either by the Carbondale Police Department or the State of Colorado, in one calendar year shall be grounds for revocation of the license pursuant to Chapter 6, Article 7.

Sec. 6-9-100. Education requirement.

Following every violation of this Ordinance or other laws applicable to tobacco products, the retailer must conduct, with all retailer employees, a retailer education program approved by the Town.

3. Chapter 6, Article 7 shall be amended by deleting the language stricken and adding the language underlined to read as follows:

ARTICLE 7 - Suspension, Revocation or Nonrenewal of a Liquor License, Retail Marijuana License, ~~or Medical Marijuana License, or Tobacco Product Retail License~~

...

4. Chapter 10, Article 6 shall be amended by deleting the language stricken and adding the language underlined to read as follows:

- (a) For purposes of this Code, the following words shall have the meanings ascribed hereafter:

...

~~Electronic smoking device means any product containing or delivering nicotine intended for human consumption that can be used by an individual to simulate smoking in the delivery or nicotine or any other substance, even if marketed as nicotine-free, through inhalation from the product. Electronic smoking device includes any refill, cartridge or component part of a product, whether or not marketed or sold separately.~~ any product containing or delivering nicotine intended for human consumption that can be used by an individual to simulate smoking in the delivery or nicotine or any other substance, even if marketed as nicotine-free, through inhalation from the product. Electronic smoking device includes any refill, cartridge or component part of a product, whether or not marketed or sold separately.

...

Licensee means the owner or holder of a tobacco product retail license pursuant to Chapter 6, Article 9.

~~Proprietor means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day operations of a business.~~

...

Tobacco product retail location means any premises where tobacco products or tobacco paraphernalia are sold or distributed to a consumer, including, but not limited to, hookah bar, lounge, or cafe, any grounds occupied by a retailer, any store, stand, outlet, vehicle, cart, location, vending machine, or structure where tobacco products are sold.

Tobacco product retailer means any person who sells, offers for sale, or does or offers to exchange for any form of consideration tobacco products or tobacco paraphernalia. Tobacco

product retailing means the doing of any of these things. This definition is without regard to the quantity of tobacco products or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

...

- (b) Any person who is engaged in tobacco product retailing who knowingly sells any tobacco products to a person under the age of 21 commits an offense and, upon conviction thereof, shall be punished by a fine of \$100.00 for the first offense, \$250.00 or a summons with fine up to \$2,650.00 for the second offense, and \$500.00 or a summons with fine up to \$2,650.00 for the third offense, and a summons with fine up to \$2,650.00 for the fourth and any subsequent offense(s). It shall be an affirmative defense to prosecution under this subsection that the person furnishing the tobacco products was presented with and reasonably relied upon a valid state driver's license or other government-issued form of identification which identified the person receiving the tobacco products as being 21 years of age or older.
- (c) Any person who sells, gives, or otherwise supplies any tobacco product(s) to a person under the age of 21 is subject to a civil penalty of \$100.00 for the first violation, \$250.00 for the second violation, and \$500.00 for the third and any subsequent violation(s).
- (d) A licensee proprietor is responsible for the actions of its agents and employees in regard to the sale of tobacco products, and the illegal sale of any tobacco products to a person under the age of 21 at the licensee's proprietor's tobacco product retail location may result in the assessment of a civil penalty to the licensee proprietor in the following amounts: up to \$1,000.00 for the first violation, up to \$1,500.00 for the second violation, and up to \$2,000.00 for the third and any subsequent violation(s). A conviction pursuant to subsection (b), above, shall constitute prima facie evidence of a licensee's proprietor's violation of this subsection. These civil penalties may be assessed in addition to suspension or revocation of the license pursuant to Chapter 6, Article 7.
- (e) Any person under the age of 21 who purchases or attempts to purchase any tobacco products, and/or is found to be in possession of any tobacco products is subject to a civil penalty of \$100.00 for the first violation, \$250.00 for the second violation, and \$500.00 for the third and any subsequent violation(s); except that, following the issuance of a civil penalty for a first offense under this subsection, the Municipal Court in lieu of the civil penalty may permit the person to participate in a tobacco or vaping education program. The Court may also allow such person to perform community service and be granted credit against the civil penalty at the rate of \$5.00 for each hour of work performed, for up to 50 percent of the civil penalty amount.
- (f) For the purposes of this Section, each separate incident at a different time and occasion is a violation.

~~(g) — No person shall sell or permit the sale of tobacco products by use of a self-service display tobacco product retailers shall stock and display all tobacco products in a manner so as to make all such products inaccessible to customers without the assistance of a retail clerk, thereby requiring a direct face to face exchange of the tobacco products from an employee of the business to the customer. Cigarettes may be sold at retail through self-service displays only in:~~

- ~~(1) — Factories, businesses, offices or other places not open to the general public;~~
 - ~~(2) — Places to which persons under the age of 21 are not permitted access at any time during the day or night; or~~
 - ~~(3) — Places where the self-service display is under the direct supervision of the owner of the establishment or an adult employee of the owner, including, but not limited to, establishments holding a valid liquor license issued pursuant to C.R.S. Article 3 of Title 44.~~
- ~~(h) — Any person who sells or offers to sell any tobacco products shall display a warning sign as specified in this subsection. Said warning sign shall be displayed in a prominent place in the tobacco product retail location at all times, shall have a minimum height of three inches and a width of six inches, and shall read as follows:~~

~~WARNING~~

~~IT IS ILLEGAL FOR ANY PERSON UNDER 21 YEARS OF AGE TO PURCHASE CIGARETTES, TOBACCO PRODUCTS, AND ELECTRONIC SMOKING DEVICES AND, UPON CONVICTION, A FINE MAY BE IMPOSED.~~

- ~~(i) — Any violation of subsection (h) above shall not constitute a violation of any other provision of this Section.~~
 - ~~(j) — The Carbondale Police Department may at its discretion conduct compliance checks, including the use of decoys, to determine compliance with this section and with other laws applicable to tobacco products.~~
- ~~(kg) A person under the age of 21 who possesses or handles tobacco products as part of that individual's employment at a tobacco product retail location does not commit a violation of this Section so long as such individual does not sell or provide tobacco products to a person under the age of 21.~~

5. This Ordinance shall be effective upon posting and publication in accordance with the Carbondale Home Rule Charter.

INTRODUCED, READ AND PASSED THIS ____ day of _____, 2019.

TOWN OF CARBONDALE, COLORADO
a Colorado home rule municipal corporation,


Dan Richardson, Mayor

ATTEST:


Cathy Derby, Town Clerk



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ⁱ U.S. DEP'T OF HEALTH AND HUMAN SERVS., PREVENTING TOBACCO USE AMONG YOUTH AND YOUNG ADULTS, A REPORT OF THE SURGEON GENERAL 268, Table 3.1.9 (2012); CAMPAIGN FOR TOBACCO FREE KIDS, INCREASING THE MINIMUM LEGAL SALE AGE FOR TOBACCO PRODUCTS TO 21, 1 (2015).

ⁱⁱ U.S. DEP'T OF HEALTH AND HUMAN SERVS., PREVENTING TOBACCO USE AMONG YOUTH AND YOUNG ADULTS, A REPORT OF THE SURGEON GENERAL 268, Table 3.1.9 (2012).

ⁱⁱⁱ CAMPAIGN FOR TOBACCO FREE KIDS, INCREASING THE MINIMUM LEGAL SALE AGE FOR TOBACCO PRODUCTS TO 21, 1 (2015).

^{iv} Dutra and Glantz, E-Cigarettes and conventional cigarette use among US adolescents: A cross-sectional study, 7 JAMA PEDIATRICS 610, 610 (2014); Adam M. Leventhal et al., Association of Electronic Cigarette Use with Initiation of Combustible Tobacco Product Smoking in Early Adolescence, 314 J OF THE AM. MED. ASSOC. 700, 706 (2015); Thomas A Wills et al., E-cigarette use and willingness to smoke: a sample of adolescent non-smokers, 25 TOB. CONTROL e52, e54 (2016); Brian A. Primack, et al., Progression to Traditional Cigarette Smoking after Electronic Cigarette Use among US Adolescents and Young Adults, 169 JAMA PEDIATRICS 1018, 1021 (2015); see Graham F. Moore et al., E-cigarette use and intentions to smoke among 10-11-year-old never-smokers in Wales, 25 TOB. CONTROL 147, 151 (2014) (finding e-cigarette use associated with weaker antismoking intentions); Rebecca E. Bunnell, Intentions to Smoke Cigarettes among Never-Smoking U.S. Middle and High School Electronic Cigarette Users, National Youth Tobacco Survey, 2011-2013, 17 Nicotine & Tobacco Research 228, 230-231 (2014), see also Andrea C. King et al., Passive exposure to electronic cigarette (e-cigarette) use increases desire for combustible and e-cigarettes in young adult smokers, 24 TOB. CONTROL 501, 503 (2015) (finding passive exposure to both e-cigarette and combustible cigarette use increased urge to smoke regular cigarettes); c.f. Abigail S. Friedman, How Do Electronic Cigarettes Affect Adolescent Smoking?, 44 J. of Health Economics 300, 300 (2015) (finding youth smoking increases with reduced access to e-cigarettes). 28 N.Y. STATE DEP'T OF HEALTH, Youth Cigarette Use at All-Time Low, ENDS Use Doubles, STATSHOT VOL.10, NO.1 (March 2017), available at https://www.health.ny.gov/prevention/tobacco_control/reports/statshots/volume10/n1_youth_cigarette_and_ends_use.pdf (last visited May 23, 2017).