

ORDINANCE NO. 13
Series of 2018

**AN ORDINANCE OF THE TOWN OF CARBONDALE, COLORADO AMENDING
CHAPTER 10, ARTICLE 6 OF THE MUNICIPAL CODE OF THE TOWN OF
CARBONDALE TO RAISE THE MINIMUM AGE FOR THE PURCHASE,
POSSESSION, AND CONSUMPTION OF TOBACCO PRODUCTS AND TO
ESTABLISH THE MINIMUM AGE FOR THE PURCHASE, POSSESSION, AND
CONSUMPTION OF ELECTRONIC SMOKING DEVICES AND RELATED
SUBSTANCES**

WHEREAS, diseases related to cigarette smoking remain one of the largest public health concerns nationwide, and in the State of Colorado, lung cancer is the leading cause of preventable death, accounting for 5,100 deaths each year; and

WHEREAS, 90 percent of adult smokers started smoking before the age of 18, and each day more than 3,000 adolescents in the U.S. try their first cigarette; and

WHEREAS, since 2014, after decades of effective anti-smoking campaigns and decreasing smoking rates in the U.S., there has been a surprising increase in youth tobacco use; and

WHEREAS, over 320 localities and five states in the U.S. have enacted into law regulations prohibiting the sale of tobacco products to individuals under the age of 21; and

WHEREAS, research demonstrates that raising the minimum age is effective in curbing high school tobacco use by up to 50 percent; and

WHEREAS, research shows that teens purchase cigarettes from peers and that 90 percent of the “social sources” (i.e. friends and family) of tobacco for 12- to 18-year-olds are 18- to 21-year-olds; and

WHEREAS, research has also shown that youth do not routinely make the effort to travel to neighboring localities if the minimum sales age is increased to 21 in their home municipality; and

WHEREAS, there has been a sharp uptick in vaping by middle and high school students through use of electronic smoking devices like e-cigarettes. E-cigarettes are now the most commonly used tobacco product among youth. According to a 2016 U.S. Surgeon General report, more than three million youth in middle and high school, including about one of every six high school students, used e-cigarettes in the past month, and more than a quarter of youth in middle and high school have tried e-cigarettes. A recent CDC study shows that Colorado leads 37 states surveyed for use of e-cigarettes among high school students and nearly six percent of those students report using electronic smoking devices regularly; and

WHEREAS, the substances consumed via electronic smoking devices can include nicotine, flavorings, and toxic particles, and electronic smoking devices can also be used as delivery systems for marijuana and other illicit drugs; and

WHEREAS, public health advocates warn that vaping can lead to long-term health risks and nicotine addiction in teenagers; and

WHEREAS, raising the minimum age for the purchase, consumption, and possession of electronic smoking devices and substances to be consumed through such devices may reduce youth initiation and overall usage rates; and

WHEREAS, the Board of Trustees finds and determines that the enactment of the regulations set forth herein is in the interest of the public health, safety, and welfare of the residents of the Town of Carbondale.

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. Chapter 10, Article 6 of the Town of Carbondale Municipal Code shall be amended by deleting the language stricken and adding the language underlined to read as follows:

...

Sec. 10-6-60. Sale of cigarettes, and-tobacco products, and electronic smoking devices.

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

Cigarettes means 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.

Electronic smoking device means an electronic device that, when activated, emits a vapor, aerosol, fume, or smoke that may be inhaled or absorbed by the user, including but not limited to an e-cigarette, e-cigar, e-pipe, vape pen, e-hookah, and similar devices. Electronic smoking device includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance, with or without nicotine, intended to be aerosolized, vaporized, or which produces a fume or smoke during the use of the device intended for human consumption.

Minor means a person under the age of 18 years.

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

Tobacco product retail location means any premises where Tobacco Products are sold or distributed to a consumer, including but not limited to hookah bar, lounge, or café, 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. "Tobacco Product Retailing" shall mean 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.

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.

(b) Any person who is engaged in Tobacco Product Retailing who knowingly sells furnishes to a minor, by gift, sale or any other means, any cigarettes or 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 ~~\$200.00~~ 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 a prosecution under this Subsection that the person furnishing the cigarettes or 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 cigarettes, Tobacco Products as being 21 ~~18~~ 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 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 Proprietor's Tobacco Product Retail Location may result in the assessment of a civil penalty to the 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 Proprietor's violation of this Subsection.

(e) Any person under the age of 21 ~~minor~~ who purchases or attempts to purchase any cigarettes or Tobacco Products, and/or is found to be in possession of any cigarettes or 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); ~~commits an offense and, upon conviction thereof, shall be punished by a fine of \$100.00;~~ except that, following the issuance of a civil penalty ~~a conviction or adjudication~~ for a first offense under

this Subsection, the Municipal Court in lieu of the civil penalty fine may permit sentence 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 fine and court costs at the rate of \$5.00 for each hour of work performed, for up to 50 percent of the civil penalty amount, fine and court costs.

(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 vending machine or other coin-operated machine. 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 minors are not permitted access at any time during the day or night; or
- (3) Places where the Self-Service Display vending machine 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 Article 47 of Title 12, C.R.S.

(h) Any person who sells or offers to sell any ~~cigarettes or~~ Tobacco Products shall display a warning sign as specified in this Subsection. Said warning sign shall be displayed in a prominent place in ~~the building~~ the Tobacco Product Retail Location at all times, shall have a minimum height of three (3) inches and a width of six (6) inches, and shall read as follows:

WARNING

IT IS ILLEGAL FOR ANY PERSON UNDER 21 ~~18~~ YEARS OF AGE TO PURCHASE CIGARETTES, ~~AND~~ TOBACCO PRODUCTS, AND ELECTRONIC SMOKING DEVICES AND, UPON CONVICTION, A ~~\$100.00~~ 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.

(k) 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.

3. If any ordinance or parts of ordinances are in conflict with the standards set forth in this Ordinance, they are hereby repealed to the extent of such conflict only.

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

INTRODUCED, READ AND PASSED THIS 24th day of July, 2018.

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


Dan Richardson, Mayor

ATTEST:


Cathy Derby, Town Clerk

POSTED: 7/25/18
PUBLISHED: 8/2/18
EFFECTIVE: 9/12/18

