

**CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER HULTIN
COUNCIL BILL NO. 04
ORDINANCE NO. 1710
Series 2021**

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO, AMENDING CHAPTER 11, LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS, WITH THE ADDITION OF NEW ARTICLE XV REGULATING TOBACCO PRODUCT RETAIL LICENSES AND CONFORMING CHANGES IN CONNECTION THEREWITH

WHEREAS, the City of Wheat Ridge, Colorado (the “City”), is a Colorado home rule municipality, duly organized and existing pursuant to Section 6 of Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority and C.R.S. § 31-15-401 et seq, and §31-15-501 et seq, the City acting through its City Council (the “Council”), is authorized to adopt rules and regulations regulating certain conduct and defining general offenses that harm or pose a threat to the public health, safety or welfare; and

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

WHEREAS, youth use of e-cigarettes and similar products is associated with future cigarette use; 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, the requirement for a tobacco retail license will not unduly burden legal business activities of retailers who sell tobacco products to adults in the City; and

WHEREAS, in order to address youth smoking, e-cigarette and tobacco use, the Council finds a retail tobacco license in Wheat Ridge is needed.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:

Section 1. The foregoing recitals are affirmed and incorporated herein by this reference as findings of the City Council.

Section 2. The Wheat Ridge, Colorado Municipal Code shall be amended with the addition of Article XV, Tobacco Product Retail License, to Chapter 11, Licenses, Permits, and Miscellaneous Business Regulations to read as follows:

ARTICLE XV – Tobacco Product Retail License

Sec. 11-230. – Purpose and Intent.

The purpose of this Article is to ensure compliance with the business standards and practices of the City, to encourage responsible tobacco product retailing, to discourage violations of tobacco product laws that prohibit or discourage the sale or distribution of tobacco products to young people, to reduce the likelihood that youth will become tobacco product users by prohibiting the sale of tobacco products to persons under the minimum legal sales age of twenty-one (21) years of age but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein to protect the health, safety and welfare of the residents of Wheat Ridge, Colorado.

Sec. 11-231. – Defined Terms.

The following terms are defined for use within this Article:

Arm's Length Transaction means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of Sec. 11-242 is not an arm's length transaction.

Cigarette means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

- (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco;
- (b) 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
- (c) 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) of this definition.
- (d) The term "cigarette" includes 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.

Cigar means any roll of tobacco other than a Cigarette wrapped entirely or in part in tobacco or any other substance containing tobacco. For purposes herein, cigar includes, but is not limited to tobacco products known or labeled as a "cigar," "cigarillo" or "little cigar."

Consumer means a person who purchases tobacco products not for sale to another.

Department means the Wheat Ridge Police Department or its designee.

Electronic Smoking Device means:

- (a) Means any product, other than a product described in subsection (3) of this section, that contains or delivers nicotine or any other substance intended for human consumption and that can be used by a person to enable the inhalation of vapor or aerosol from the product;
- (b) Includes any similar product or device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen or under any other product name or descriptor; and
- (c) Does not include:
 - (1) A humidifier or similar device that emits only water vapor; or
 - (2) An inhaler, nebulizer, or vaporizer that is approved by the federal food and drug administration for the delivery of medication

Good Cause means for the purpose of refusing or denying a License under this Article:

- (a) The Licensee has violated, does not meet, or has failed to comply with:
 - (1) any of the terms, conditions or provisions of this Article; or
 - (2) any of the terms, conditions or provisions of this Article; or
 - (3) a rule or regulation promulgated by the Licensing Authority pursuant to this Article, or
- (b) The Licensee has failed to comply with:
 - (1) any terms and conditions of the License including, but not limited to, any special terms and conditions placed on the License at the time the License was issued or any terms and conditions to the License subsequently modified by the Licensing Authority pursuant to Sec. 11-235(d); or
 - (2) any special condition placed on the License in a prior disciplinary proceeding or that arose in the context of a prior disciplinary hearing.

License means a Tobacco Product Retail License.

Licensing Authority means the person(s) within the City designated by this Article with responsibility for the tobacco retail licensing system hereby adopted.

License Fee means the annual fee for a Tobacco Product Retail License calculated to include the City's cost of administration of this Article, Licensee education, inspections of Licensed premises, regular compliance checks, documentation of violations (database management), and prosecutions of violations of Licenses.

Little Cigar means any roll of Tobacco other than a Cigarette wrapped entirely or in part in Tobacco and weighing no more than three pounds per thousand. "Little Cigar"

includes, but is not limited to, any product known or labeled as “small cigar” “cigarillo” or “little cigar.”

Minimum Legal Sales Age means twenty-one (21) years of age or older.

Person means any natural person, partnership, cooperative association, corporation, limited liability company, personal representative, receiver, trustee, assignee or other legal entity.

Retail Tobacco Specialty Business means a person engaged primarily in the sale at retail of any tobacco products, and in which the sale of other products is less than 25 percent of gross sales receipts.

Sale or Sell means any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner or by any means whatsoever.

School means: a private or public kindergarten, elementary, middle, junior high, or high school.

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 Licensee or an employee of the Licensee and a direct person-to-person transfer between the Consumer and the Licensee or employee of the Licensee. A vending machine is a form of self-service display.

Tobacco Paraphernalia means any item designed for the consumption, use, or preparation of a Tobacco Product.

Tobacco Product means:

- (a) any product which contains, is made or derived from tobacco or used to deliver nicotine, synthetic nicotine or other substances intended for human consumption, whether heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means, including, but not limited to Cigarettes, Cigars, Little Cigars, chewing tobacco, pipe tobacco, snuff, bidis, snus, nicotine product, mints, hand gels; and
- (b) an Electronic Smoking Device;
- (c) notwithstanding any provision of subsections (1) and (2) of this Section to the contrary, “Tobacco Product” includes any component, part, accessory or associated Tobacco Paraphernalia of a Tobacco Product whether or not sold separately.
- (d) The term “Tobacco Product” does not include:
 - (1) any product that contains marijuana; and

- (2) any product made from or derived from tobacco and approved by the Food and Drug Administration (FDA) for use in connection with cessation of smoking.

Tobacco Product Retailer means any Person who sells, offers for sale, or exchanges or offers to exchange for any form of consideration a Tobacco Product(s). This definition is without regard to the quantity of Tobacco Products sold, offered for sale, exchanged, or offered for exchange.

Tobacco Product Retailing means any Person who engages in the sale of Tobacco Products directly to the public from any store, stand, booth, concession, outlet, vehicle, cart, vending machine, structure or any grounds or any other enterprise that Sells, offers for Sale, or does or offers to exchange for any form of consideration Tobacco Products.

Youth-Oriented Facilities means any park, playground, and city-owned recreation facility.

Sec. 11-232. – Licensing Authority.

The City designates the City Treasurer or his/her designee to act as the Tobacco Product Retail Licensing Authority, referred to in this Article as the “Licensing Authority.”

Sec. 11-233. – Requirements and Prohibitions.

- (a) *License Required.* It shall be unlawful for any person to act as a Tobacco Product Retailer in the City without first obtaining and then maintaining a valid Tobacco Product Retail License pursuant to this Article for each retail location where the activity is to occur.
- (b) *Other Municipal Licenses.* A License issued pursuant to this Article does not eliminate the need for the Licensee to obtain other required City licenses related to the operation of the Licensee’s business, including, without limitation:
 - (1) a City Business License.
- (c) *Display of License.* Each Tobacco Product Retail License shall be prominently displayed on the premises of the Licensee in a publicly visible location.
- (d) *Lawful Business Operation.* In the course of Tobacco Product Retailing or in the operation of the business or maintenance of the location for which a License issued, it shall be a violation of this Article for a Licensee, or any of the Licensee’s agents or employees, to violate any local, state, or federal law applicable to Tobacco Product Retailing.
- (e) *Minimum Legal Sales Age.* Tobacco Products shall not be sold to any person under twenty-one (21) years of age.
- (f) *Minimum Legal Sales Age Signage Requirements.* Signage is required on the Licensed premises indicating that Tobacco Products shall not be sold to any

person under the Minimum Legal Sales Age of twenty-one (21) years of age. The signage shall be prominently displayed at minimum at all entrances on the premises.

- (g) *Minimum Legal Age to Sell Tobacco Products.* No person who is younger than eighteen (18) shall sell, stock, retrieve or other otherwise handle Tobacco Products.
- (h) *Self-Service Displays Prohibited.* Tobacco Product Retailing by means of a Self-Service Display is prohibited except within Retail Tobacco Specialty Businesses.
- (i) *Positive Identification Required.* No Licensee shall sell or transfer a Tobacco Product(s) to an individual who appears to be under the age of fifty (50) years without first examining the government issued photographic identification of the recipient to confirm that the recipient is at least twenty-one years of age (the Minimum Legal Sales Age for Tobacco Products).

Sec. 11-234. – Limits on License Eligibility.

- (a) *Mobile Vending.* No License shall be issued to authorize Tobacco Product Retailing at a location other than a fixed location. Tobacco products may not be sold or provided for delivery.
- (b) *Under-Age Applicant.* An applicant not of the Minimum Legal Sales Age for Tobacco Products is ineligible to obtain a Tobacco Product Retail License.
- (c) *Schools and Youth-oriented facilities.* Tobacco Product Retailing is prohibited near schools, public and private, and youth-oriented facilities, as follows:
 - (1) Except as provided in subsection (d) of this Section no new License may be issued within one thousand (1000) feet of a public or private School as measured by a straight line from the nearest point of the property line of the parcel on which the School is located to the nearest point of the property line of the parcel on which the applicant's business is located.
 - (2) Except as provided in subsection (d) of this Section no new License may be issued within one thousand (1000) feet of a youth-oriented facility as measured by a straight line from the nearest point of the property line of the parcel on which facility is located to the nearest point of the property line of the parcel on which the applicant's business is located.
- (d) *A Tobacco Product Retailer Operating Lawfully on Effective Date.* A Tobacco Product Retailer operating lawfully on the Effective Date of this Article, as adopted by Ordinance 1710, Series 2021, which retailer is ineligible to receive or renew a Tobacco Product Retail License for a location pursuant to subsection (c) of this Section and any Licensee operating lawfully who becomes ineligible to receive or renew a License due to the creation of a new School, may apply for a License for the location pursuant to the standard

License application procedure described in Sec. 11-235. This exception to applicability of the 1000 ft restriction is lost in the event the affected Tobacco Product Retailer is not open for business for one (1) year or more.

Sec. 11-235. – License Application.

- (a) *Application Form.* All Tobacco Product Retail License applications shall be submitted on a form supplied by the Licensing Authority and shall contain the following information:
- (1) The name, address, and telephone number of each applicant seeking a License;
 - (2) The business name, address, and telephone number of the single fixed location where a License is sought.
 - (3) A name and mailing address authorized by each applicant authorized to receive all communications and notices (the “authorized address”) required by, authorized by, or convenient to the enforcement of this Article. If an authorized address is not supplied, each applicant shall be understood to consent to the provision of notice at the business address specified in subparagraph (2) of this section.
- (b) *Applicable Laws.* It is the responsibility of each applicant to inform themselves regarding all laws applicable to Tobacco Product Retailing, including those laws affecting the issuance of a Tobacco Product Retail License.
- (c) *Review of License Application.* Upon receipt of a properly completed application, together with all information required in connection therewith and the payment of the License Fee as required by Sec. 11-238, the Licensing Authority shall transmit copies of the application to:
- (1) the Wheat Ridge Police Department, and
 - (2) any other agency the Licensing Authority determines should properly investigate and comment upon the application.
- (d) *Application Review. Other Departments or Agencies.* Within twenty (20) days of receipt of a completed application the Wheat Ridge Police Department, and those referral agencies described in subsection (c)(2) of this Section shall provide the Licensing Authority with comments concerning the application.
- (e) *Additional Information.* If the Licensing Authority requests the applicant to provide additional information that the Licensing Authority reasonably determines to be necessary in connection with the investigation and review of the application, the applicant shall provide such information within five (5) business days of the Licensing Authority’s request, unless the Licensing Authority agrees to a longer period of time.

- (f) *Conditional Approval.* The Licensing Authority shall conditionally approve or deny an application within thirty (30) days of the receipt of a completed application unless, by written notice to the applicant, the decision period is extended for an additional ten (10) days if necessary, for the Licensing Authority to complete the Licensing Authority's review of the application.

Sec. 11-236. – Issuance of License.

- (a) The Licensing Authority shall issue a license under this Article when, from consideration of the application, and such other relevant information as may otherwise be obtained, the Licensing Authority determines that:
- (1) The application (including any required attachments and submissions) is complete and signed by the applicant, and the applicant has provided any additional information concerning the application requested by the Licensing Authority pursuant to Sec. 11-235(d);
 - (2) The applicant has paid the application fee required by Sec. 11-238;
 - (3) The application does not contain a material falsehood or misrepresentation; and
 - (4) The granting of the application will not endanger public health or safety.
- (b) No applicant may rely on the issuance of a License as a determination by the City that the applicant has complied with all laws applicable to Tobacco Product Retailing.
- (c) Nothing in this Article shall be construed to vest in any person obtaining and maintaining a Tobacco Product Retail License any status or right to act as a Tobacco Product Retailer in contravention of any provision of law.

Sec. 11-237. – Denial of Application.

- (a) The Licensing Authority shall deny an application for a License under this Article if the Licensing Authority determines that:
- (1) Information contained in the application, or supplemental information provided by the applicant, is found to be false in any material respect;
 - (2) The applicant has had a License issued under this Article revoked within the two (2) years immediately preceding the filing of the application, or the applicant owned a fifty percent or greater interest in any business entity that has had a License issued under this Article revoked within the two (2) years immediately preceding the filing of the application;
 - (3) The applicant is currently indebted to the City for any lawfully assessed tax or fee; or
 - (4) The granting of the application will endanger public health or safety.

- (5) The proposed location and/or applicant is not eligible pursuant to Sec.11-234.
- (6) The denial is required for one or more of the reasons in Sec.11-31, as referenced by Section 11-28.
- (b) If the application is denied, the Licensing Authority shall clearly set forth in writing the grounds for denial.
- (c) Upon denial of an application the application fee shall not be refunded.
- (d) In addition to the standards terms and conditions set forth in Sec. 11-233 and Sec.11-234, the Licensing Authority shall have the authority to impose such additional reasonable terms and conditions on a License as may be necessary to protect the public health, safety, and welfare, and to obtain compliance with the requirements of this Article and other applicable law.

Sec. 11-238. – License Term, Renewal and Expiration.

- (a) The term of a License is one year and shall expire on December 31 of each calendar year, provided however, the initial term for any license issued in calendar year 2021 shall extend until December 31, 2022.
- (b) Each Tobacco Product Retailer shall apply for the renewal of the License and submit the applicable License Fee no later than thirty (30) days prior to expiration of the term to the Licensing Authority.
- (c) A Licensee does not have a vested right or a property right in the renewal of a License issued pursuant to this Article.
- (d) The Licensing Authority may refuse to renew a License for good cause.
- (e) A License is invalid if the License Fee has not been timely paid in full or if the term of the License has expired.
- (f) A License that is not timely renewed shall expire at the end of its term. To renew a License not timely renewed pursuant to subsection (b) of this Section, the applicant must:
 - (1) submit the License Fee and application renewal form; and
 - (2) submit a signed affidavit affirming that the applicant has not sold and will not sell any Tobacco Product(s) after the License expiration date and before the License is renewed.

Sec. 11-239. – License Non-Transferrable.

- (a) A Tobacco Product Retail License shall not be transferred from one Person to another or from one location to another. A new License is required whenever a

Tobacco Product Retail location has a change in owner(s) in an Arm's Length Transaction.

- (b) When a license has been issued to a husband and wife, or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new license for the remainder of the term of that license. All rights and privileges granted under the original license shall continue in full force and effect as to such survivors for the balance of the term of the license.
- (c) Notwithstanding any other provision of this Article, prior violations at a Licensed location shall continue to be counted against the location and License ineligibility periods shall continue to apply to the location unless:
 - (1) the location has been transferred to a new business owner in an Arm's Length Transaction; and
 - (2) the new business owner(s) provide the Licensing Authority with clear and convincing evidence that the new business owner(s) has acquired or is acquiring the location in an Arm's Length Transaction.

Sec. 11-240. – License Conveys a Limited, Conditional Privilege.

- (a) Nothing in this Article shall be construed to grant any person obtaining or maintaining a Tobacco Product Retail License any status or right other than the limited conditional privilege to act as a Tobacco Product Retailer at the location in the City identified on the face of the License. Nothing in this Article shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law, including but not limited to, any provision of this Article.
- (b) The City may adopt and promulgate rules and regulations, in addition to those contained herein. Such rules and regulations, when promulgated, shall have the same force and effect as if incorporated in this Article.

Sec. 11-241. – Compliance Monitoring.

- (a) Compliance with this Article shall be monitored by the Wheat Ridge Police Department. The City may designate any number of authorized City officials to monitor compliance with this Article.
- (b) All Licensed premises must be open to inspection by law enforcement or other authorized City official(s) during regular business hours.
- (c) From time to time, but at least two (2) times per year, the City will conduct compliance checks of all Licensees by engaging with persons under the Minimum Legal Sales Age of twenty-one (21) years of age to enter a Licensed premise to attempt to purchase Tobacco Products.
- (d) Prior written consent is required for any minor who participates in a compliance check on behalf of the City. Individuals participating in compliance checks will

be supervised by law enforcement or other designated personnel and will not be guilty of illegal possession or illegal procurement when those items are obtained as part of the compliance check. The City shall not enforce any law establishing a minimum legal sales age for Tobacco Product purchases or for possession of tobacco products against an individual who otherwise would be in violation of such law because of the individual's age (hereinafter "Underage Operative") if the potential violation occurs when:

- (1) the Underage Operative is participating in an inspection supervised by a peace officer, code enforcement official, or the Department designated by the City to monitor compliance with this Article;
- (2) the Underage Operative is acting as an agent of an individual, Department or group Designated by the City to monitor compliance with this Article; or
- (3) the Underage Operative is participating in an inspection funded in part, either directly or indirectly through subcontracting, by the Jefferson County public health department, Colorado Department of Public Health and Environment or the Colorado Department of Revenue.

(e) Nothing in this section shall create a right of action in any Licensee or other party against the City or its agents.

Sec. 11-242. – Penalties, Suspension and Revocation of License.

- (a) The City has the authority to suspend, restrict or revoke a License upon any violation of these regulations or License requirements or any rule promulgated pursuant to these regulations.
- (b) Any violation of the License requirements may be subject to suspension or revocation of the License. Each day that a violation exists shall be considered a separate occurrence subject to penalties herein.
- (c) Any complaint of a violation of the License requirements shall be referred to the Licensing Authority. If upon investigation by the City that a violation is found, a hearing on the violation will be held by the Licensing Authority or designee. Upon a determination that a violation has occurred, the Licensing Authority may suspend, restrict or revoke a License.
- (d) Suspension and Revocation Following Violation.
 - (1) Upon a finding by the Licensing Authority of a first violation of this Article within a three-year period at a Licensed location, a civil fine shall be imposed in the amount of \$500;
 - (2) Upon a finding by the Licensing Authority of a second violation of this Article within a three-year period at a Licensed location, the License shall be suspended for seven (7) days;

- (3) Upon a finding of a third violation of this Article within a three-year period at a Licensed location, the License shall be suspended for thirty (30) days;
 - (4) Upon a finding of a fourth violation within a three-year period of this Article at a Licensed location, the License shall be suspended for one (1) year;
 - (5) Upon a finding of five violations within a three-year period of this Article at a Licensed location, the License shall be revoked, and the Licensee shall be deemed ineligible to apply for a License for two (2) years.
- (e) In addition to any other penalty authorized by law, a License shall be suspended or revoked if a court of competent jurisdiction determines, or the Licensing Authority based on a preponderance of the evidence, after the Licensee is afforded notice and an opportunity to be heard, that the Licensee, or any of the Licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of this Article or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any provision of this Article.
 - (f) No fee previously paid by a Licensee in connection with the application shall be refunded if such License is suspended or revoked.
 - (g) The removal of all Tobacco Products from public view is required during any period in which the License is suspended or revoked.
 - (h) When a License has been revoked no new License shall be issued to the same Licensee for the period of two (2) years after revocation pursuant to Sec. 11-242(d)(5).
 - (i) A Tobacco Retail License shall be revoked if the Department finds, after the Licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a License under Sec. 11-237 existed at the time application was made or at any time before the License was issued. Such a revocation shall be without prejudice to the filing of a new License application.
 - (j) Any decision made by the Licensing Authority with respect to issuance, suspension, or revocation of a License pursuant to this Article shall be a final decision of the City and may be appealed to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The applicant's or Licensee's (as applicable) failure to timely appeal the decision is a waiver the applicant's or Licensee's right to contest the denial or conditional approval of the application.

Sec. 11-243. – Violations and Enforcement.

- (a) A person required to have a valid License issued pursuant to this Article operating a business without a Tobacco Product Retail License shall be subject

to prosecution in the municipal court pursuant to Sections 1-5 and 1-6 of the Code.

- (b) For the purposes of enforcement of this Article:
 - (1) Each day that a Tobacco Product(s) is offered for sale is a separate violation.
 - (2) Each Tobacco Product(s) distributed, sold, or offered for sale in violation of this Article shall constitute a separate violation.
- (c) In addition to other remedies provided by this Article or by other law, any violation of this Article may be remedied by a civil action brought by the City, including administrative or judicial nuisance abatement proceedings, and suits for injunctive relief.
- (d) In any case in which the City prevails in a civil action initiated pursuant to this Section, the City may recover its reasonable attorney fees plus costs of the proceeding.
- (e) Whenever evidence of a violation of this Article is obtained in any part through the participation of an individual under the Minimum Legal Sales Age to purchase Tobacco Products (Underage Operative) such individual shall not be required to appear or give testimony in any civil or administrative process brought to enforce this Article and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- (f) Businesses in violation of this Article are hereby declared to be public nuisances, and may be abated pursuant to Code Sections 15-5 through 15-12 as "offensive businesses."
- (g) All civil fines and license fees imposed under this Article, if not timely paid, may be collected by the City pursuant to any of the procedures in Code Section 2-6. The Licensing Authority is hereby authorized to adopt rules and regulations to implement the provisions of this Article.

Section 3. Subparagraphs (a)(12) and (29)- (33), inclusive, of Section 9-23(a) of the of the Code of Laws are amended to read:

- (12) INDOOR AREAS OF food service establishments;
- (29) A cigar-tobacco bar:
 - (a) Shall not expand its size or change its location from the size and location in which it existed as of December 31, 2005; and
 - (b) Shall prohibit entry by any person under TWENTY-ONE years of age and shall display signage in at least one (1) conspicuous place and at least four (4) inches by six (6) inches in size stating: "Smoking allowed. PERSONS under TWENTY-ONE years of age may not enter."

- (30) Hotel and motel rooms;
- (31) Assisted living facilities, including nursing facilities, as defined in section 9-22 AND ASSISTED LIVING RESIDENCES;
- (32) The entryways of all buildings and facilities listed in section 9-24.
- (33) A retail tobacco business:
 - (a) Shall prohibit entry by any person under TWENTY-ONE years of age; and
 - (b) Shall display signage in at least one (1) conspicuous place and at least four (4) inches by six (6) inches in size stating either:
 - (1) "Smoking allowed. PERSONS under TWENTY-ONE years of age may not enter."; or
 - (2) In the case of a retail tobacco business that desires to allow the use of ESDs but not other forms of smoking on the premises, "Vaping allowed. PERSONS under TWENTY-ONE years of age may not enter."

Section 4. Section 9-24(a)(3) of the Code of Laws, previously permitting smoking in certain hotel and motel rooms, is repealed.

Section 5. Section 9-24(a)(7) of the Code of Laws, previously permitting smoking in places of employment not open to the public, is repealed.

Section 6. Section 9-25 of the Code of Laws is repealed and reenacted in its entirety to read:

The owner or manager of any place otherwise exempted under Section 9-24 may post signs prohibiting smoking. Such posting shall have the effect of including such place in the places where smoking is prohibited or restricted pursuant to Section 9-23.

Section 6. Section 16-176(a) of the Code of Laws is amended to read:

Sec. 16-176. Furnishing cigarettes to minors.

- (a) *Unlawful.* It is unlawful for any person to sell, give or distribute ~~cigarettes~~ TOBACCO products to any person under the age of ~~sixteen (16)~~ TWENTY-ONE (21) years.

Section 7. Severability, Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 8. Effective Date. This Ordinance shall take effect on July 1, 2021, as permitted by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of 8 to 0 on this 22nd day of March 2021, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge and Public Hearing and consideration on final passage set for April 12, 2021, as a virtual meeting.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of 8 to 0, this 12th day of April 2021.

SIGNED by the Mayor on this 12th day of April 2021.



Bud Starker, Mayor

ATTEST:



Steve Kirkpatrick, City Clerk



Approved as to Form



Gerald E. Dahl, City Attorney

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