

CITY OF NOBLE ORDINANCE NO. 604

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF NOBLE, OKLAHOMA, AMENDING PART 3, CHAPTER 4, SECTIONS 3-401, 3-402, 3-403, 3-404, 3-405, 3-407, 3-409 AND 3-410 OF THE CODE OF ORDINANCES OF THE CITY OF NOBLE, OKLAHOMA, BY MAKING THOSE SECTIONS OF THE CODE OF ORDINANCES OF THE CITY OF NOBLE COMPLIANT WITH THE OKLAHOMA PREVENTION OF YOUTH ACCESS TO TOBACCO ACT AS CODIFIED IN TITLE 37 OF THE OKLAHOMA STATUTES AND AS AMENDED BY SENATE BILL 1423 AS ADOPTED BY THE 2020 REGULAR SESSION OF THE OKLAHOMA LEGISLATURE; ADOPTING A REPEALER; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR THE DECLARATION OF AN EMERGENCY IF BY SEPARATE VOTE THE CITY COUNCIL DETERMINES THAT AN EMERGENCY EXISTS NECESSITATING THAT THIS ORDINANCE BE DECLARED TO BE EFFECTIVE IMMEDIATELY UPON ITS ADOPTION.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF NOBLE, OKLAHOMA:

SECTION 1. That Section 3-401 of Chapter 4, Tobacco Regulations, Part 3, Alcohol and Tobacco, of The Code of Ordinances of the City of Noble is hereby amended to read as follows:

SECTION 3-401 DEFINITIONS

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

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

5. "Sampling" means the distribution of samples to members of the public in a public place;
6. "Tobacco product" means any product that contains tobacco and is intended for human consumption;
7. "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;
8. "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; and
9. "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 and any vapor cartridge or other container of a solution, that may or may not contain nicotine, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo or electronic 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 2. That Section 3-402 of Chapter 4, Tobacco Regulations, Part 3, Alcohol and Tobacco, of The Code of Ordinances of the City of Noble is hereby amended to read as follows:

SECTION 3-402 UNLAWFUL TO SELL OR FURNISH TOBACCO, NICOTINE OR VAPOR PRODUCTS 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 product, nicotine product or vapor product to another person who is under twenty-one (21) years of age, or to purchase in any manner a tobacco product, nicotine product or vapor product on behalf of any such person. Provided, however, that it shall not be unlawful for an employee under twenty-one (21) years of age to handle tobacco products, nicotine products or vapor products when required in the performance of the employee's duties.

- B. A person engaged in the sale or distribution of tobacco products, nicotine 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 might be under twenty-one (21) years of age.**

If an individual engaged in the sale or distribution of tobacco products, nicotine products or vapor products had demanded proof of age from a prospective purchaser or recipient who is not less than twenty-one (21) years of age, the failure to subsequently require proof of age shall not constitute a violation of this subsection.

- C. 1. Any violation of subsection A or B of this Section is an offense against the City of Noble and, upon conviction of any such offense, the violator shall be punished 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 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, or**
- 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 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.**

2. 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 product, nicotine 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, 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.

Provided, that this defense shall not relieve from liability any person cited for a violation of this section if such a 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 3. That Sections 3-403 of Chapter 4, Tobacco Regulations, Part 3, Alcohol and Tobacco, of The Code of Ordinances of the City of Noble is hereby amended to read as follows:

SECTION 3-403 RECEIPT OF TOBACCO PRODUCTS, NICOTINE PRODUCTS AND VAPOR PRODUCTS BY PERSONS UNDER TWENTY-ONE YEARS OF AGE PROHIBITED

- A. It is unlawful for a person who is less than twenty-one (21) years of age to purchase, receive, or accept receipt of, or have in their possession a tobacco product, nicotine 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 product or vapor product. Provided, however, it shall not be unlawful for an employee who is less than twenty-one (21) years of age to handle such tobacco products or vapor products when required in the performance of 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 two-year period following the first offense.

Upon failure of the individual to pay the fine within ninety (90) days of the day of the fine, the Municipal Court clerk is authorized to notify the Department of Public Safety of such failure.

SECTION 4. That Sections 3-404 of Chapter 4, Tobacco Regulations, Part 3, Alcohol and Tobacco, of The Code of Ordinances of the City of Noble is hereby amended to read as follows:

SECTION 3-404 PROPER SIGNAGE REQUIRED

- A. Every person who sells or displays tobacco products, nicotine products or vapor products at retail 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 PRODUCTS, NICOTINE PRODUCTS OR VAPOR PRODUCTS TO PERSONS UNDER 21 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 products or vapor products at retail.**

SECTION 5. That Sections 3-405 of Chapter 4, Tobacco Regulations, Part 3, Alcohol and Tobacco, of The Code of Ordinances of the City of Noble is hereby amended to read as follows:

SECTION 3-405 NOTICE TO RETAIL EMPLOYEES

- A. Every person engaged in the business of selling tobacco products, nicotine products or vapor products at retail 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 products, nicotine products or vapor products to any person under twenty-one (21) of age and the purchase or receipt of tobacco products, nicotine products or vapor products by any person under twenty-one (21)-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 twenty-one (21) 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 and local law prohibits the sale or distribution of tobacco products, nicotine products or vapor products to persons under twenty-one (21)

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 twenty-one (21) 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 or permit suspension."

SECTION 6. That Sections 3-407 of Chapter 4, Tobacco Regulations, Part 3, Alcohol and Tobacco, of The Code of Ordinances of the City of Noble is hereby amended to read as follows:

SECTION 3-407 DISTRIBUTION OF TOBACCO PRODUCT, NICOTINE PRODUCT AND VAPOR PRODUCT SAMPLES

- A. It shall be unlawful for any person or retailer to distribute tobacco products, nicotine products, vapor products or product samples to any person under twenty-one (21) years of age.**
- B. No person shall distribute tobacco products, nicotine products, vapor products 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 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 a third or subsequent offense.**

SECTION 7. That Section 3-409 of Chapter 4, Tobacco Regulations, Part 3, Alcohol and Tobacco, of The Code of Ordinances of the City of Noble is hereby amended to read as follows:

SECTION 3-409 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, nicotine products or vapor products in any manner that allows public**

access to the tobacco products, nicotine products or vapor products without assistance from the person displaying the tobacco products, nicotine products 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. That Sections 3-410 of Chapter 4, Tobacco Regulations, Part 3, Alcohol and Tobacco, of The Code of Ordinances of the City of Noble is hereby amended to read as follows:

SECTION 3-410 ENFORCEMENT

- A. Any conviction for a violation of any section within this Chapter and any negative results from compliance checks performed by a municipal police officer 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 such 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 their designee and compliance checks shall be reported by the Chief of Police or their 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 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 compliance checks and enforcement of this Chapter; provided, such persons who are under eighteen (18) years of age may be enlisted to assist in compliance checks 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.**

SECTION 9. Repealer.

All former ordinances or parts of Ordinance conflicting or inconsistent with the provisions of this Ordinance are hereby repealed.

SECTION 10. Severability.

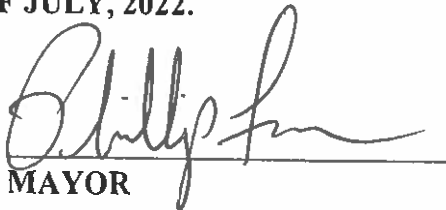
The provisions of this ordinance are severable and if any section, subsection, subdivision, paragraph, sentence, clause or phrase or any part thereof is for any reason determined to be unconstitutional or adjudged invalid or ineffective by any Court of competent jurisdiction, such determination or adjudication shall not affect or impair the validity or effectiveness of the remaining parts, provisions or portions hereof.

SECTION 11. Emergency.

EMERGENCY CLAUSE

WHEREAS, it being immediately necessary for the preservation of the peace, health, welfare and safety of the City of Noble, Oklahoma, and the inhabitants thereof that the provisions of this ordinance be put into full force and effect, an emergency is hereby declared to exist by reason whereof, this ordinance shall take effect and be in full force from and after its passage as provided by law.

ADOPTED AND APPROVED THIS 5TH DAY OF JULY, 2022.


MAYOR

ATTEST:


CITY CLERK

(SEAL)

