

1 **BY AUTHORITY**

2 ORDINANCE NO. _____
3 SERIES OF 2019

COUNCIL BILL NO. CB19-0921
COMMITTEE OF REFERENCE:
4 Safety, Housing, Education & Homelessness

5 **A BILL**

6 **For an ordinance amending the Revised Municipal Code of the City and County**
7 **of Denver to prohibit the sale of tobacco products to persons under twenty-one**
8 **years of age and require a license to operate a retail tobacco store.**
9

10 **WHEREAS**, tobacco use is the leading cause of preventable premature death in Colorado and
11 continues to be an urgent public health concern;

12 **WHEREAS**, youth and young adults in the City and County of Denver continue to use tobacco
13 products and experience tobacco-related harm at alarming rates;

14 **WHEREAS**, research indicates that raising the minimum legal age for the sale of tobacco
15 products is an effective strategy to reduce tobacco use among youth and young adults;

16 **WHEREAS**, the strict enforcement of policies prohibiting the retail sale of tobacco products to
17 youth and young adults, sales of tobacco products using vending machines, and other means by
18 which youth and young adults gain access to tobacco in the commercial setting, can limit their
19 opportunities to obtain these products;

20 **WHEREAS**, the strong enforcement and monitoring of tobacco retailer compliance with tobacco
21 control policies is necessary to reduce tobacco sales rates to youth and young adults after raising
22 the minimum legal sales age to twenty-one years of age and requiring a retail tobacco store license;
23 and

24 **WHEREAS**, raising the minimum legal sales age for tobacco products and requiring a retail
25 tobacco store license is necessary to protect the approximately 120,700 people under twenty-one
26 years of age in the City and County of Denver from tobacco-related morbidity and mortality.
27

28 **NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF**
29 **DENVER:**

30 **Section 1.** That Chapter 24, Article 1, Division 3, entitled "Sale of Tobacco Products," of
31 the Denver Revised Municipal Code shall be repealed.
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33

34 **Section 2.** That Chapter 24, Article XI, Division 1, of the Denver Revised Municipal Code
35 shall be amended to add the underscored words as follows:

1 **“Article XI. Sale of Tobacco Products.**

2

3 **Division 1. – In General.**

4

5 **Sec. 24-401. - Definitions.**

6 (a) Board means the board of public health and environment of the City and County of Denver.

7 (b) Child care establishment means any child care establishment as defined by and regulated
8 under Chapter 11 of this Code and licensed as such under applicable state and local law.

9 (c) Director means the director of the department of excise and licenses of the City and County
10 of Denver and the director’s authorized representative.

11 (d) Manager means the manager of the department of public health and environment of the City
12 and County of Denver and the manager’s authorized representative.

13 (e) Person means any firm, corporation, association, or other organization acting as a group or
14 unit as well as an individual. It shall also include an executor, administrator, trustee, receiver,
15 or other representative appointed according to law.

16 (f) School means a public or private preschool or a public or private elementary, middle, junior
17 high, or high school.

18 (g) Retail tobacco store means a business of any kind that sells, gives, delivers, or furnishes
19 tobacco products to a user or consumer.

20 (h) Tobacco product means:

21 (1) Any product containing tobacco or nicotine or that is made or derived from tobacco that
22 may be used to introduce tobacco or nicotine into the human body, including but not
23 limited to, cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco,
24 dipping tobacco, dissolvable tobacco products, and nicotine-enhanced products;

25 (2) Any electronic device that may be used to deliver nicotine to the person inhaling from
26 the device, including any solution, compound, or other substance containing nicotine
27 to be used with the device; and

28 (3) Any other preparation of tobacco and any product or formulation of matter containing
29 nicotine that may be used to introduce nicotine into the human body.

30 Excluded from this definition are any products specifically approved by the United States Food
31 and Drug Administration for use in reducing, treating, or eliminating nicotine or tobacco dependence
32 or for other medical purposes, when these products are being marketed and sold solely for such
33 approved purpose.

1 (i) Vending machine means any mechanical, electric or electronic device that, on insertion of
2 money, tokens or any other form of payment, automatically dispenses tobacco products.

3
4 **Sec. 24-402. Sale of tobacco products to persons under twenty-one years of age prohibited.**

5 (a) It shall be unlawful for any person to sell, give, deliver or furnish any tobacco product to
6 anyone who has not reached twenty-one (21) years of age.

7 (b) It shall be unlawful for any person to permit or allow the person's agent, servant, officer or
8 employee to sell, give, deliver or furnish any tobacco product to anyone who has not reached
9 twenty-one (21) years of age.

10 (c) Any person who sells or offers to sell tobacco products shall display the warning sign(s)
11 required by C.R.S. § 44-7-103, as amended.

12
13 **Sec. 24-403. - Sale of tobacco products from vending machines prohibited.**

14 It shall be unlawful for any person to sell or offer for sale any cigarettes or other tobacco products
15 by use of a vending machine or other coin-operated machine.

16
17 **Sec. 24-404. - Access to tobacco products.**

18 (a) It shall be unlawful for any person to sell or display or permit to be sold or displayed any
19 tobacco product in such a manner that it can be reached or purchased by customers without
20 it being requested from, and provided by, an employee of the establishment.

21 (b) This section 24-404 shall not apply to cigars or pipe tobacco sold or displayed by a person
22 who primarily engages in the business of selling cigars, pipe tobacco, cigar related
23 accessories, and pipe tobacco related accessories, or the rental of on-premises humidors or
24 other cigar storage units.

25
26 **Sec. 24-405. - Packaging of tobacco products.**

27 (a) It shall be unlawful for any person to sell tobacco products in any form or condition other than
28 in the packaging provided by the manufacturer.

29 (b) It shall be unlawful for any person to permit or allow that person's agent, servant, or employee
30 to sell tobacco products in any form or condition other than in the packaging provided by the
31 manufacturer.

32 (c) This section 24-405 shall not apply to cigars or pipe tobacco sold by a person who primarily
33 engages in the business of selling cigars, pipe tobacco, cigar related accessories, and pipe
34 tobacco related accessories, or the rental of on-premises humidors or other cigar storage
35 units.

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Sec. 24-406. - Suspension of right to sell tobacco products.

- (a) Upon a determination that a violation of this Division 1 has occurred at a given location, the manager may issue a warning that a future violation within one (1) year may result in the suspension of the person's right to sell tobacco products where the violation occurred.
- (b) Upon a determination that a second violation of this Division 1 has occurred at the same location within one (1) year after the first violation, the manager may suspend the person's right to sell tobacco products for a period not to exceed thirty (30) days at the location where the violations occurred. Such suspension order shall be effective thirty (30) days from the date of issuance.
- (c) Upon a determination that a third violation of this Division 1 has occurred at the same location within one (1) year after the first violation, or upon a determination of a violation of the terms or conditions of an order suspending sales privileges entered pursuant to the provisions of this section, the manager may suspend the person's right to sell tobacco products at the location where the violations occurred for a period not to exceed sixty (60) days. Such suspension order shall be effective thirty (30) days from the date of issuance.
- (d) Upon a determination that a fourth or subsequent violation of this Division 1 has occurred at the same location within a one-year period, or upon a determination that two (2) or more violations of the terms or conditions of an order suspending sales privileges entered pursuant to the provisions of this section have occurred, the manager may suspend the person's right to sell tobacco products at the location where the violations occurred for a period not to exceed one (1) year. Such suspension order shall be effective thirty (30) days from the date of issuance.
- (e) The manager may take any actions the manager deems necessary to ensure compliance with a suspension of the right to sell tobacco products, including, but not limited to, requiring the person to remove all tobacco products from the sales area of the location where tobacco is sold for the duration of the suspension, and inspecting any and all documentation relevant to the suspension. The manager may post, in a prominent place at the premises of the location where tobacco sales have been suspended, a notice that tobacco sales have been suspended for the duration of the suspension.

Secs. 24-407–24-419. – Reserved.”

Section 3. That Chapter 24, Article XI, Division 2, of the Denver Revised Municipal Code shall be amended to add the underscored words as follows:

“Division 2. – License required.

1 **Sec. 24-420. – License required.**

- 2 (a) On and after January 1, 2021, it shall be unlawful for any person to operate a retail tobacco
3 store without first having obtained a valid retail tobacco store license pursuant to this Division
4 2; provided, however that pre-existing retail tobacco stores that have submitted applications
5 for licensing under this article as of July 1, 2020 may continue in operation until the director
6 takes a final action on the retail tobacco store application.
- 7 (b) No person shall be deemed to have any entitlement or vested right to licensing under this
8 article by virtue of having received any prior license or permit from the city, including but not
9 limited to, any zoning permit or any sales tax license.

10

11 **Sec. 24-421. – Applications.**

12 All retail tobacco store license applications shall be submitted on forms provided by the director.
13 In addition to information required by Chapter 32 of this Code, the applications shall contain the
14 following information:

- 15 (a) Records of any previous violations and alleged violations related to the sale of tobacco
16 products; and
- 17 (b) Any supplemental materials the director deems necessary to implement this Division 2 and
18 any rules adopted by the board or the department of excise and licenses.

19

20 **Sec. 24-422. – Grounds for denial.**

- 21 (a) An application for a retail tobacco store license may be denied under this Division 2 if:
- 22 (1) The applicant, or a principal of the applicant, has received notice of any violation of a
23 federal, state, or local law related to tobacco sales, or rule or regulation adopted
24 pursuant thereto;
- 25 (2) The applicant fails to obtain all necessary permits, licenses, and other regulatory
26 approvals required by all state and local laws, and any rules and regulations adopted
27 pursuant thereto; or
- 28 (3) The applicant proposes to operate on a temporary (less than a year), pop-up, or mobile
29 basis. However, this subsection (3) shall not apply to an applicant who proposes to
30 operate a regularly scheduled tobacco trade show where tobacco products will be sold
31 on a temporary basis.
- 32 (b) In addition to the grounds set forth in Chapter 32 of this Code, an application for a retail
33 tobacco store license shall be denied under this Division 2 if:
- 34 (1) The applicant's proposed location is within 1,000 feet of any of the following locations:

- 1 a. Any school, with the distance computed by direct measurement in a straight line
2 from the nearest property line of the land used for the school to the nearest
3 portion of the building in which the retail tobacco store is proposed to be located;
- 4 b. Any child care establishment, with the distance computed by direct
5 measurement in a straight line from the nearest property line of the land used
6 for the child care establishment to the nearest portion of the building in which
7 the retail tobacco store is proposed to be located; or
- 8 c. Any city-owned recreation center or city-owned outdoor pool, with the distance
9 computed by direct measurement in a straight line from the nearest property
10 line of the land used for the recreation center or outdoor pool to the nearest
11 portion of the building in which the retail tobacco store is proposed to be located.

12 (2) The applicant's proposed location is within 500 feet of any other retail tobacco store
13 licensed under this article, with the distance computed by direct measurement in a
14 straight line from the nearest portion of the building in which the retail tobacco store is
15 proposed to be located to the nearest portion of the building in which the other retail
16 tobacco store is located. Upon receipt of two (2) or more applications for retail tobacco
17 store licenses with proposed locations within 500 feet of each other, the director shall
18 act upon only the first complete application received and shall reject all subsequent
19 applications.

20 (3) This subsection (b) shall not apply to any application for a retail tobacco store license
21 submitted on or before July 1, 2020.

22

23 **Section 24-423. – Transferability of license.**

24 (a) *In general.* For the purposes of this Division 2, the transfer, sale, or assignment of more than
25 fifty (50) percent ownership interest in a retail tobacco store shall be deemed a transfer of
26 ownership.

27 (b) *Ownership Transferable.* A retail tobacco store license shall be transferable from one (1)
28 person to another upon approval by the director. Any application to transfer ownership of a
29 retail tobacco store license may be denied for the reasons set forth in section 24-422, except
30 that any transfer of ownership of a retail tobacco store license shall not affect any exemption
31 that the licensed premises may enjoy from the location restrictions set forth in Section 24-
32 422(b)(3).

33 (c) *Location Nontransferable.* No retail tobacco store license shall be transferable from one (1)
34 location to another.

35

36 **Sec. 24-424. – Term of licenses; renewals.**

- 1 (a) Any license for a retail tobacco store shall be valid for a period of one (1) year from the date
2 of issuance, unless earlier suspended or revoked.
- 3 (b) Except when the department of excise and licenses has received a complete renewal
4 application, it shall be unlawful for a retail tobacco store to sell, give, deliver, or furnish tobacco
5 products after the expiration date recorded upon the face of the license issued pursuant to
6 this Division 2.
- 7 (c) In addition to the grounds for denial and revocation provided in Chapter 32 of this Code, the
8 director may refuse to renew a license for any of the grounds for denial provided in Section
9 24-422 or any grounds for revocation provided in Section 24-425.

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11 **Sec. 24-425. – Suspension, revocation, and other sanctions.**

- 12 (a) In addition to the grounds provided in Chapter 32 of this Code, a license under this Division 2
13 may be suspended or revoked for any of the grounds for denial set forth in Section 24-422.
- 14 (b) Procedures for investigation of license violations, and for suspension, revocation, or other
15 licensing sanctions as a result of any such violation, shall be as provided in Chapter 32 of this
16 Code and any rules and regulations promulgated by the director.

17

18 **Sec. 24-426. - Rules and regulations.**

- 19 (a) The board may adopt such rules and regulations as may be necessary for the protection of
20 public health related to the operation of retail tobacco stores.
- 21 (b) The manager may issue orders to any licensee to comply with this Article XI and the rules
22 and regulations of the board. It shall be unlawful for any person to knowingly fail to comply
23 with an order of the manager.
- 24 (c) The director may adopt such rules and regulations as may be necessary for the purpose of
25 administering and enforcing the provisions of this Article XI and any other ordinances or laws
26 relating to and affecting the licensing and operation of retail tobacco stores.
- 27 (d) It shall be unlawful for any person to violate a rule or regulation adopted by the board or the
28 director pursuant to this section.”

29

30 **Section 4.** That Chapter 32, Article II, of the Denver Revised Municipal Code shall be
31 created to add the underscored words as follows:

32

33 **“Sec. 32-107.5. – Retail tobacco stores.**

1 Retail tobacco stores shall pay the following fees:

- 2 (1) Application fee \$250.00
- 3 (2) Annual license fee \$500.00
- 4 (3) Transfer of ownership fee \$100.00”

5
6 COMMITTEE APPROVAL DATE: September 11, 2019

7 MAYOR-COUNCIL DATE: September 17, 2019 by Consent

8 PASSED BY THE COUNCIL: _____

9 _____ - PRESIDENT

10 APPROVED: _____ - MAYOR _____

11 ATTEST: _____ - CLERK AND RECORDER,
12 EX-OFFICIO CLERK OF THE
13 CITY AND COUNTY OF DENVER

14 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____; _____

15 PREPARED BY: Lindsay S. Carder, Assistant City Attorney DATE: September 19, 2019

16 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
17 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
18 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to
19 § 3.2.6 of the Charter.

20
21 Kristin M. Bronson, Denver City Attorney

22 BY: TJ B, Assistant City Attorney DATE: Sep 19, 2019
23 _____