

1 **BY AUTHORITY**

2 ORDINANCE NO. _____ COUNCIL BILL NO. CB***Bill Number with XX-XXXX format***

3 SERIES OF 2019

COMMITTEE OF REFERENCE:

4 ***Committee of Reference***

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31 the Denver Revised Municipal Code shall be repealed.
32
33

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

3
4 **“Article XI. Sale of Tobacco Products.**

5
6 **Division 1. – In General.**

7
8 **Sec. 24-401. - Definitions.**

- 9 (a) Board means the board of public health and environment of the City and County of Denver.
- 10 (b) Child care establishment means any child care establishment as defined by and regulated
11 under Chapter 11 of this Code and licensed as such under applicable state and local law.
- 12 (c) Director means the director of the department of excise and licenses of the City and County
13 of Denver and the director’s authorized representative.
- 14 (d) Manager means the manager of the department of public health and environment of the City
15 and County of Denver and the manager’s authorized representative.
- 16 (e) Person means any firm, corporation, association, or other organization acting as a group or
17 unit as well as an individual. It shall also include an executor, administrator, trustee, receiver,
18 or other representative appointed according to law.
- 19 (f) School means a public or private preschool or a public or private elementary, middle, junior
20 high, or high school.
- 21 (g) Retail tobacco store means a business of any kind that sells, gives, delivers, or furnishes
22 tobacco products to a user or consumer.
- 23 (h) Tobacco product means:
- 24 (1) Any product containing tobacco or nicotine or that is made or derived from tobacco that
25 may be used to introduce tobacco or nicotine into the human body, including but not
26 limited to, cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco,
27 dipping tobacco, dissolvable tobacco products, and nicotine-enhanced products;

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

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

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

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

12
13 **Sec. 24-402. Sale of tobacco products to persons under twenty-one years of age prohibited.**

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

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

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

21
22 **Sec. 24-403. - Sale of tobacco products from vending machines prohibited.**

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

25
26 **Sec. 24-404. - Access to tobacco products.**

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

30 (b) This section 24-404 shall not apply to cigars or pipe tobacco sold or displayed by a person
31 who primarily engages in the business of selling cigars, pipe tobacco, cigar related

1 accessories, and pipe tobacco related accessories, or the rental of on-premises humidors or
2 other cigar storage units.

3
4 **Sec. 24-405. - Packaging of tobacco products.**

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

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

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

14
15 **Sec. 24-406. - Suspension of right to sell tobacco products.**

16 (a) Upon a determination that a violation of this Division 1 has occurred at a given location, the
17 manager may issue a warning that a future violation within one (1) year may result in the
18 suspension of the person's right to sell tobacco products where the violation occurred.

19 (b) Upon a determination that a second violation of this Division 1 has occurred at the same
20 location within one (1) year after the first violation, the manager may suspend the person's
21 right to sell tobacco products for a period not to exceed thirty (30) days at the location where
22 the violations occurred. Such suspension order shall be effective thirty (30) days from the date
23 of issuance.

24 (c) Upon a determination that a third violation of this Division 1 has occurred at the same location
25 within one (1) year after the first violation, or upon a determination of a violation of the terms
26 or conditions of an order suspending sales privileges entered pursuant to the provisions of
27 this section, the manager may suspend the person's right to sell tobacco products at the
28 location where the violations occurred for a period not to exceed sixty (60) days. Such
29 suspension order shall be effective thirty (30) days from the date of issuance.

30 (d) Upon a determination that a fourth or subsequent violation of this Division 1 has occurred at
31 the same location within a one-year period, or upon a determination that two (2) or more
32 violations of the terms or conditions of an order suspending sales privileges entered pursuant
33 to the provisions of this section have occurred, the manager may suspend the person's right

1 to sell tobacco products at the location where the violations occurred for a period not to
2 exceed one (1) year. Such suspension order shall be effective thirty (30) days from the date
3 of issuance.

4 (e) The manager may take any actions the manager deems necessary to ensure compliance with
5 a suspension of the right to sell tobacco products, including, but not limited to, requiring the
6 person to remove all tobacco products from the sales area of the location where tobacco is
7 sold for the duration of the suspension, and inspecting any and all documentation relevant to
8 the suspension. The manager may post, in a prominent place at the premises of the location
9 where tobacco sales have been suspended, a notice that tobacco sales have been
10 suspended for the duration of the suspension.

11
12 **Secs. 24-407–24-419. – Reserved.**

13
14 **Section 3.** That Chapter 24, Article XI, Division 2, of the Denver Revised Municipal Code
15 shall be amended to add the underscored words as follows:

16
17 **“Division 2. – License required.**

18
19 **Sec. 24-420. – License required.**

20 (a) On and after January 1, 2021, it shall be unlawful for any person to operate a retail tobacco
21 store without first having obtained a valid retail tobacco store license pursuant to this Division
22 2; provided, however that pre-existing retail tobacco stores that have submitted applications
23 for licensing under this article as of July 1, 2020 may continue in operation until the director
24 takes a final action on the retail tobacco store application.

25 (b) No person shall be deemed to have any entitlement or vested right to licensing under this
26 article by virtue of having received any prior license or permit from the city, including but not
27 limited to, any zoning permit or any sales tax license.

28
29 **Sec. 24-421. – Applications.**

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

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

5

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

- 7 (a) An application for a retail tobacco store license may be denied under this Division 2 if:
- 8 (1) The applicant, or a principal of the applicant, has received notice of any violation of a
9 federal, state, or local law related to tobacco sales, or rule or regulation adopted
10 pursuant thereto;
- 11 (2) The applicant fails to obtain all necessary permits, licenses, and other regulatory
12 approvals required by all state and local laws, and any rules and regulations adopted
13 pursuant thereto; or
- 14 (3) The applicant proposes to operate on a temporary (less than a year), pop-up, or mobile
15 basis. However, this subsection (3) shall not apply to an applicant who proposes to
16 operate a regularly scheduled tobacco trade show where tobacco products will be sold
17 on a temporary basis.
- 18 (b) In addition to the grounds set forth in Chapter 32 of this Code, an application for a retail
19 tobacco store license shall be denied under this Division 2 if:
- 20 (1) The applicant's proposed location is within 1,000 feet of any of the following locations:
- 21 a. Any school, with the distance computed by direct measurement in a straight line
22 from the nearest property line of the land used for the school to the nearest
23 portion of the building in which the retail tobacco store is proposed to be located;
- 24 b. Any child care establishment, with the distance computed by direct
25 measurement in a straight line from the nearest property line of the land used
26 for the child care establishment to the nearest portion of the building in which
27 the retail tobacco store is proposed to be located; or
- 28 c. Any city-owned recreation center or city-owned outdoor pool, with the distance
29 computed by direct measurement in a straight line from the nearest property
30 line of the land used for the recreation center or outdoor pool to the nearest
31 portion of the building in which the retail tobacco store is proposed to be located.

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

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

11
12 **Section 24-423. – Transferability of license.**

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

16 (b) *Ownership Transferable.* A retail tobacco store license shall be transferable from one (1)
17 person to another upon approval by the director. Any application to transfer ownership of a
18 retail tobacco store license may be denied for the reasons set forth in section 24-422, except
19 that any transfer of ownership of a retail tobacco store license shall not affect any exemption
20 that the licensed premises may enjoy from the location restrictions set forth in Section 24-
21 422(b)(3).

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

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

26 (a) Any license for a retail tobacco store shall be valid for a period of one (1) year from the date
27 of issuance, unless earlier suspended or revoked.

28 (b) Except when the department of excise and licenses has received a complete renewal
29 application, it shall be unlawful for a retail tobacco store to sell, give, deliver, or furnish tobacco
30 products after the expiration date recorded upon the face of the license issued pursuant to
31 this Division 2.

32 (c) In addition to the grounds for denial and revocation provided in Chapter 32 of this Code, the

1 director may refuse to renew a license for any of the grounds for denial provided in Section
2 24-422 or any grounds for revocation provided in Section 24-425.

3
4 **Sec. 24-425. – Suspension, revocation, and other sanctions.**

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

10
11 **Sec. 24-426. - Rules and regulations.**

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

22
23 **Section 4.** That Chapter 32, Article II, of the Denver Revised Municipal Code shall be
24 created to add the underscored words as follows:

25
26 **“Sec. 32-107.5. – Retail tobacco stores.**

27 Retail tobacco stores shall pay the following fees:

- 28 (1) Application fee \$250.00

- 1 (2) Annual license fee \$500.00
2 (3) Transfer of ownership fee \$100.00”
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DRAFT 8-13-19

1 COMMITTEE APPROVAL DATE: ***Committee Agenda Date*** **IF

2 CommitteeAgendaConsentYESORNO***

3 MAYOR-COUNCIL DATE: ***Mayor-Council Agenda Date***

4 PASSED BY THE COUNCIL: _____

5 _____ - PRESIDENT

6 APPROVED: _____ - MAYOR _____

7 ATTEST: _____ - CLERK AND RECORDER,
8 EX-OFFICIO CLERK OF THE
9 CITY AND COUNTY OF DENVER

10 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____;

11 PREPARED BY: Lindsay S. Carder, Assistant City Attorney DATE: ***Date of Bill Filing***

12 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
13 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
14 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to
15 § 3.2.6 of the Charter.

16
17 Kristin M. Bronson, Denver City Attorney

18
19 BY: _____, Assistant City Attorney DATE: _____

