

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.**
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

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

26
27 **NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF**
28 **DENVER:**

29 **Section 1.** That Chapter 24, Section 24-11, of the Denver Revised Municipal Code shall
30 be amended to add the underscored words and delete the stricken words, as follows:
31

1 **“Sec. 24-11. - Definitions.**

2 (a) Manager, as used in this division, means the manager of the department of public health and
3 environment of the City and County of Denver and the manager’s authorized representative.

4 (b) Person, as used in this division, means any firm, corporation, association, or other
5 organization acting as a group or unit as well as an individual. It shall also include an executor,
6 administrator, trustee, receiver, or other representative appointed according to law.

7 ~~(b) Self-service fixture, as used in this division, means any display unit or device from which a~~
8 ~~product may be obtained without the aid of store personnel.~~

9
10 ~~(c) Single vend "lock-out" device, as used in this division, means a device which must be~~
11 ~~activated by an employee in order for a vending machine to dispense a single product.~~

12
13 ~~(d)~~(c) Tobacco product, as used in this division, means:

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

18 (2) Any electronic device that ~~is intended~~ may be used to deliver nicotine to the person
19 inhaling from the device, including any solution, compound, or other substance containing
20 nicotine to be used with the device; and

21 (3) Any other preparation of tobacco, ~~other than a cigarette,~~ and any product or formulation
22 of matter containing ~~biologically active amounts of~~ nicotine that may be used to introduce
23 ~~these substances~~ nicotine into the human body.

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

28 ~~(e)~~(d) Vending machine, as used in this division, means any mechanical, electric or electronic device
29 that, on insertion of money, tokens or any other form of payment, automatically dispenses
30 tobacco products.”

31
32 **Section 2.** That Chapter 24, Section 24-12, of the Denver Revised Municipal Code shall
33 be amended to add the underscored words and delete the stricken words, as follows:

34 **“Sec. 24-12. Sale of tobacco products to persons under twenty-one years of age minors**
35 **prohibited.**

36 (a) It shall be unlawful for any person to sell, give, deliver or furnish any tobacco product to
37 anyone who has not reached ~~eighteen (18)~~ twenty-one (21) years of age. It shall be an
38 affirmative defense to prosecution under this subsection (a) that the person reasonably relied

1 upon a photo identification document which identified the person receiving the tobacco
2 product as being ~~eighteen (18)~~ twenty-one (21) years of age or older.

3 (b) It shall be unlawful for any person to permit or allow their agent, servant, officer or employee
4 to sell, give, deliver or furnish any tobacco product to anyone who has not reached ~~eighteen~~
5 ~~(18)~~ twenty-one (21) years of age. It shall be an affirmative defense to prosecution under this
6 subsection (b) that the employer person has fully complied with section 24-13.5.

7 (c) Any person who sells or offers to sell any ~~cigarettes or tobacco products~~ shall display a the
8 warning sign(s) as required by C.R.S. § 44-7-103, specified in this paragraph (c). It is unlawful
9 for any person to fail to display such warning sign. Such warning sign shall be displayed in a
10 prominent place in the building and on any vending machine which dispenses a tobacco
11 product at all times and shall have a minimum height of three (3) inches and a width of six (6)
12 inches, and shall read as follows:

13 **WARNING**

14 **IT IS ILLEGAL FOR ANY PERSON UNDER EIGHTEEN YEARS OF AGE TO PURCHASE**
15 **OR POSSESS CIGARETTES OR TOBACCO PRODUCTS AND, UPON CONVICTION, A**
16 **FINE MAY BE IMPOSED"**

17
18 **Section 3.** That Chapter 24, Section 24-12.5, of the Denver Revised Municipal Code shall
19 be amended to add the underscored words and delete the stricken words, as follows:

20 **"Sec. 24-12.5. - Sale of tobacco products from vending machines prohibited.**

21 It shall be unlawful for any person, partnership, association, company, corporation, or any
22 manager, agent, servant, officer, or employee of any of them to sell or offer for sale any cigarettes
23 or other tobacco products by use of a vending machine or other coin-operated machine ~~except when~~
24 ~~the establishment is in full compliance with the provisions of section 24-13.5(b) through (e).~~ In that
25 event, cigarettes and other tobacco products may be sold at retail from a coin-operated machine in:

26 (a) ~~Private clubs, businesses, or factories that do not employ persons under the age of eighteen~~
27 ~~(18) or allow them on the premises.~~

28 (b) ~~Adult uses, as defined in chapter 59 of the Revised Municipal Code (zoning), which do not~~
29 ~~employ persons under the age of eighteen (18) or allow them on the premises.~~

30 (c) ~~Establishments licensed to sell spirituous liquors for consumption on the premises, but only~~
31 ~~when the vending machine operation is controlled by an employee through the use of a single~~
32 ~~vending "lock-out" device.~~

33 (d) ~~Licensed food service establishments, but only when the vending machine operation is~~
34 ~~controlled by an employee through the use of a single vending "lock-out" device."~~

35
36 **Section 4.** That Chapter 24, Section 24-13, of the Denver Revised Municipal Code shall
37 be amended to add the underscored words and delete the stricken words, as follows:

38 **"Sec. 24-13. - Access to tobacco products.**

1 It shall be unlawful for any person to sell or display or permit to be sold or displayed any tobacco
2 product in such a manner that it can be reached or purchased by customers without it being
3 requested from, and provided by, an employee of the establishment ~~except as provided in section~~
4 ~~24-12.5 and section 24-12.7.~~"

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6 **Section 5.** That Chapter 24, Section 24-13.5, of the Denver Revised Municipal Code shall
7 be amended to add the underscored words and delete the stricken words, as follows:

8 **"Sec. 24-13.5. Affirmative Defenses.**

9 It shall be an affirmative defense to charges brought under paragraph 24-12(b) that the
10 ~~retailer~~ person has complied with the following:

- 11 (a) The ~~retailer~~ person has not been charged with ~~two~~ one (21) violations of paragraph 24-12(b)
12 at the same location as the alleged violation of this division within a year of the date of the
13 alleged violation;
- 14 (b) The ~~retailer~~ person has established and enforces a written policy against selling tobacco
15 products to persons under ~~eighteen~~ (18) twenty-one (21) years of age, which requires
16 employees to verify the age of tobacco product customers by way of a photo identification
17 document and establishes sanctions for noncompliance;
- 18 (c) The ~~retailer~~ person has provided training to all employees who sell tobacco products
19 regarding the requirements of all applicable city ordinances, state laws, and company policies
20 that (1) prohibit the sale of tobacco products to persons under ~~eighteen~~ (18) twenty-one (21)
21 years of age; (2) require employees to verify the age of tobacco product customers who
22 appear to be under ~~twenty-seven~~ (27) thirty (30) years of age by demanding a photo
23 identification document, ~~unless the customer's age has been verified previously~~; (3) require
24 the assessment of a penalty or appropriate sanction for an employee violation of law or
25 company policy; and (4) require a signed statement from the employee acknowledging their
26 understanding of the applicable law and company policies;
- 27 (d) The ~~retailer~~ person has posted warnings as set forth in section 24-12(c) at the check stand,
28 and cash registers, ~~and at or near any tobacco vending machines~~ that warn persons under
29 the age of ~~eighteen~~ (18) twenty-one (21) that it is illegal for them to purchase tobacco
30 products; and
- 31 (e) The ~~retailer~~ person uses visual or electronic aids at the point of sale to remind salespersons
32 to require photo identification and verify the customer is of lawful age during tobacco product
33 purchases."

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35 **Section 6.** That Chapter 24, Section 24-14, of the Denver Revised Municipal Code shall
36 be amended to add the underscored words and delete the stricken words, as follows:

37 **"Sec. 24-14. - Packaging of tobacco products.**

- 1 (a) It shall be unlawful for any person to sell cigarettes tobacco products in any form or condition
2 other than in the packaging provided by their manufacturer.
- 3 (b) It shall be unlawful for any person to permit or allow that person's agent, servant, or
4 employee to sell cigarettes tobacco products in any form or condition other than in the
5 packaging provided by the manufacturer.”
6

7 **Section 7.** That Chapter 24, Section 24- , of the Denver Revised Municipal Code shall be
8 amended to add the underscored words and delete the stricken words, as follows:

9 **“Sec. 24-15. - Suspension of right to sell tobacco products.**

- 10 (a) Upon a determination that a violation of this division has occurred at a given location, the
11 manager may issue a warning that a future violation within one (1) year may result in the
12 suspension of the ~~retailer's~~ person's right to sell tobacco products where the violation
13 occurred.
- 14 (b) Upon a determination that a second violation of this division has occurred at the same location
15 within one (1) year after the first violation, the manager, ~~after offering the retailer an~~
16 ~~opportunity to respond to a show cause order,~~ may, after thirty (30) days from the date of
17 issuing a suspension order, suspend the ~~retailer's~~ person's right to sell tobacco products for
18 a period not to exceed thirty (30) days at the location where the violations occurred.
- 19 (c) Upon a determination that a third violation of this division has occurred at the same location
20 within one (1) year after the first violation or upon a determination of a violation of the terms
21 or conditions of an order suspending sales privileges entered pursuant to the provisions of
22 this section, the manager, ~~after offering the retailer an opportunity to respond to a show cause~~
23 ~~order,~~ may, after thirty (30) days from the date of issuing a suspension order, suspend the
24 ~~retailer's~~ person's right to sell tobacco products for a period not to exceed sixty (60) days at
25 the location where the violations occurred.
- 26 (d) Upon a determination that a fourth or subsequent violation of this division has occurred at the
27 same location within a one-year period, or upon a determination that two (2) or more violations
28 of the terms or conditions of an order suspending sales privileges entered pursuant to the
29 provisions of this section have occurred, the manager, ~~after offering the retailer an opportunity~~
30 ~~to respond to a show cause order,~~ may, after thirty (30) days from the date of issuing a
31 suspension order, suspend the ~~retailer's~~ person's right to sell tobacco products for a period
32 not to exceed one (1) year at the location where the violations occurred.
- 33 (e) The manager may take any actions the manager deems necessary to ensure compliance with
34 a suspension of the right to sell tobacco products, including, but not limited to, requiring the
35 person to remove all tobacco products from the sales area of the location where tobacco is
36 sold for the duration of the suspension, and inspecting any and all documentation relevant to
37 the suspension. The manager may post, in a prominent place at the premises of the location
38 where tobacco sales have been suspended, a notice that tobacco sales have been
39 suspended for the duration of the suspension.”

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

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

PASSED BY THE COUNCIL: _____
_____ - PRESIDENT

APPROVED: _____ - MAYOR _____

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

NOTICE PUBLISHED IN THE DAILY JOURNAL: _____; _____

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

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

Kristin M. Bronson, Denver City Attorney

BY: _____, Assistant City Attorney DATE: _____