

ORDINANCE NO. 2020 - 11

AN ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, AMENDING CHAPTER 73, TOBACCO PRODUCTS, OF THE CODE OF THE CITY OF VERO BEACH, RELATED TO THE USE OF ELECTRONIC CIGARETTES; TO PROHIBIT THE SALE AND DISTRIBUTION OF TOBACCO PRODUCTS TO PERSONS UNDER 21 YEARS OF AGE; PROVIDING FOR PENALTIES; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Vero Beach recognizes that the use of tobacco products has devastating health and economic consequences; and

WHEREAS, commercial tobacco use is the foremost preventable cause of premature death in America. It causes nearly half a million deaths annually and has been responsible for 20.8 million premature deaths in the United States since the first Surgeon General's report on smoking in 1964; and

WHEREAS, tobacco product use leads to more than \$300 billion in health care and lost worker productivity each year; and

WHEREAS, young brains are particularly susceptible to the addictive properties of nicotine, which results in approximately three out of four teen smokers end up smoking into adulthood; and

WHEREAS, an estimated 5.6 youths under the age of 17 are projected to die prematurely from commercial tobacco-related illness if prevalence rates do not change; and

WHEREAS, in 2015, the Institute of Medicine (now the National Academy of Medicine) concluded that raising the minimum legal sales age for tobacco products nationwide would reduce tobacco initiation, particularly among adolescents aged 15 to 17, improve health across the lifespan, and save lives; and that raising the minimum legal sales for tobacco products nationwide to 21 would, over time, lead to a 12 percent decrease in smoking prevalence; and

WHEREAS, 14 states and at least 475 cities and counties have enacted minimum legal sales age 21 policies to further restrict access to commercial tobacco; and

WHEREAS, raising the age for tobacco sales in the City of Vero Beach, Florida, would lessen the accessibility of tobacco to minors and further the City's interest in furthering the health, safety, and general welfare of the residents of the City; and

WHEREAS, the use of unregulated high-tech nicotine dispensing devices, commonly referred to as electronic cigarettes or e-cigarettes, is becoming more prevalent and wide-spread; and

WHEREAS, laboratory tests conducted by the U.S. Food and Drug Administration (FDA) have shown that e-cigarette vapors contain carcinogens, including nitrosamines. Further, FDA tests showed that e-cigarette vapors were found to contain toxic chemicals such as diethylene glycol, a common ingredient in antifreeze; and

WHEREAS, bystanders are exposed to the vapor or “aerosol” emitted into the air by the users of e-cigarettes, which studies have reported such aerosol as containing, depending on the type and flavoring, formaldehyde, acetaldehyde, isoprene, acetic acid, 2-butanodione, acetone, propanol, propylene glycol, diacetyl, nicotine, and other toxins, although such toxins were found in lower levels when compared to conventional tobacco cigarette emissions; and

WHEREAS, studies measuring the effect of e-cigarettes on indoor pollution have also found elevated levels of nicotine, 1,2-propanediol, glycerin, aluminum, and 7 polycyclic aromatic hydrocarbons classified as probable carcinogens by the International Agency for Research on Cancer; and

WHEREAS, other governments and public health organizations, including the World Health Organization and the Canadian government’s FDA equivalent, the Health Products and Food Branch Inspectorate, have joined the FDA in speaking out about the potential dangers posed by e-cigarettes; and

WHEREAS, the Florida Legislature has addressed the effects of smoking conventional tobacco products and second-hand smoke by adoption of the “Florida Clean Indoor Air Act,” section 386.201, Florida Statutes, et seq., which Act prohibits smoking in specified indoor areas; and

WHEREAS, the state and federal governments have otherwise been slow to respond similarly in a meaningful manner regarding the public health issues and concerns caused by the use of e-cigarettes in indoor areas; and

WHEREAS, protecting the citizens of the City of Vero Beach against exposure to indoor pollution and toxins produced from the use of e-cigarettes represents sound public health policy; and

WHEREAS, a prohibition on the use of e-cigarettes in the City of Vero Beach in the same places where the state has prohibited smoking serves an important municipal and public interest in furtherance of the health, safety, and general welfare of the citizens of the City of Vero Beach,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, THAT:

Section 1 – Adoption of “Whereas” clauses.

The foregoing “Whereas” clauses are hereby adopted and incorporated herein as the legislative findings, purpose, and intent of this Ordinance.

Section 2 – Amendment of Chapter 73, Tobacco Products.

Chapter 73, Tobacco Products, of the Code of the City of Vero Beach is hereby amended as follows:

CHAPTER 73 – TOBACCO PRODUCTS

ARTICLE I. - IN GENERAL

Section 73-1. Title.

This chapter shall be known and may be cited as the "Tobacco Products Ordinance."

Section 73-2. Purpose and intent.

It is the intent of this chapter to promote, protect, and improve the health, safety, and general welfare of the citizens of the City of Vero Beach by discouraging the unhealthy practice of using tobacco and related products and to help prevent the addiction to nicotine, especially by young people, through regulation of the sale, merchandising, and use of certain tobacco, nicotine, and related products the regulation of which is not preempted to the federal or state government.

Section 73-3. Definitions.

As used in this chapter:

Business means any sole proprietorship, joint venture, partnership, corporation, limited liability company, or other entity formed for profit making or nonprofit purposes, including but not limited to all retail establishments where goods or services are sold or offered for sale.

City means all that area within the corporate limits of the City of Vero Beach.

Electronic cigarette and e-cigarette mean any electronic device composed of a mouthpiece, heating element, battery, and electronic circuits that provides, or is manufactured or intended to provide, a vapor of liquid nicotine and/or other substances mixed with propylene glycol and/or other substances delivered or deliverable to the user that he or she can inhale in simulation of smoking. This term shall include every version and type of such devices whether they are manufactured or marketed as e-cigarettes, e-cigars, e-pipes, or under any other product name or description.

Enclosed indoor workplace shall have the same meaning and definition as provided in the Florida Clean Indoor Air Act, section 386.201, Florida Statutes, et seq.

Liquid nicotine means any liquid product composed either in whole or in part of pure nicotine and propylene glycol and/or any other substance and manufactured for use with e-cigarettes.

Nicotine dispensing device shall have the same meaning and definition as provided in section 877.112, Florida Statutes.

Open display unit, in the context of the retail sale of e-cigarettes and liquid nicotine, means any device, furniture, or furnishing within or upon which e-cigarettes or liquid nicotine are displayed to customers, and includes but is not limited to any case, rack, shelf, counter, table, desk, kiosk, booth, stand, and other surface.

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

Retail e-cigarette shop means an enclosed indoor workplace dedicated to or predominately for retail sale of nicotine dispensing devices and e-cigarettes, liquid nicotine and/or other substances intended for use in such devices, and accessories for such devices and products, in which the sale of other products and services is merely incidental.

Retailer means any person or business that operates a store, stand, booth, concession, or other place at which sales of e-cigarettes and/or liquid nicotine are made to purchasers for consumption or use.

Self-service merchandising, in the context of the retail sale of e-cigarettes and liquid nicotine, means the open display of e-cigarettes and liquid nicotine, whether packaged or otherwise, for direct retail customer access and handling prior to purchase without the intervention of assistance of the retailer or the retailer's owner, employee, or agent. Such open display includes the use of an open display unit.

Tobacco products mean any product containing, made, or derived from tobacco or nicotine, whether natural or synthetic, that is intended for human consumption, or is likely to be consumed, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part or accessory of a tobacco product, including but not limited to cigarettes; e-liquids; cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; Cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco products also means vaporized nicotine or any other substance to the person inhaling from the device including, but not limited to, e-cigarettes, e-cigars, e-pipes, vapor products, or hookahs as prohibited in this chapter. Tobacco products also mean any component or accessory used in the consumption of tobacco products, whether or not they contain nicotine, including, but not limited to, filters, cartridges, pods, pens, rolling papers, or pipes. Tobacco products do not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco-cessation product or as a tobacco-dependence product intended to assist tobacco users in quitting or reducing tobacco use, or for other medical purposes, and is being marketed and sold solely for such purpose.

Section 73-4 —73-20. Reserved.

ARTICLE II. - ELECTRONIC CIGARETTES

Section 73-21. Sale of e-cigarettes to minors prohibited.

No person, business, retailer, or other establishment shall sell, permit to be sold, or offer for sale to any person under 21 years of age any e-cigarette or liquid nicotine within the city. A violator of this section includes the person who sells, permits to be sold, or offers for sale any such product to a person under 21 years of age as well as his or her employer and any person who controls the person who sells, permits to be sold, or offers for sale any such product to a person under 21 years of age.

Section 73-22. Self-service merchandising prohibited.

(a) No person, business, retailer, or other establishment engaged in the retail sale of e-cigarettes or liquid nicotine shall sell, permit to be sold, offer for sale, or display for sale e-cigarettes or liquid nicotine within the city by means of self-service merchandising.

(b) No person, business, retailer, or other establishment engaged in the retail sale of e-cigarettes or liquid nicotine shall place e-cigarettes or liquid nicotine in an open display unit within the city unless the same is located in an area that is inaccessible to customers.

Section 73-23. Use of e-cigarettes prohibited where smoking prohibited.

(a) A person may not use, employ, or otherwise operate any nicotine dispensing device or e-cigarette in any enclosed indoor workplace located within the city wherein smoking is prohibited pursuant to the Florida Clean Indoor Air Act, section 386.201, Florida Statutes, et seq. The exceptions provided in said Act that permit smoking in certain places shall also apply to permit the use of nicotine dispensing devices and e-cigarettes in the same places designated in the Act. In addition, the use of nicotine dispensing devices and e-cigarettes may be permitted in a retail e-cigarette shop.

(b) The proprietor or other person in charge of any enclosed indoor workplace subject to the prohibition established in subsection (a) must develop and implement a policy for compliance with said prohibition. The policy may include, but is not limited to, procedures to be taken when the proprietor or other person in charge witnesses or is made aware of a violation of subsection (a) and must include a policy which prohibits an employee from using any nicotine dispensing device or e-cigarette in the enclosed indoor workplace. In order to increase public awareness, the proprietor or person in charge of the enclosed indoor workplace may, at his or her discretion, post signs stating "NO SMOKING OR USE OF E-CIGARETTES" or similar language as deemed appropriate.

ARTICLE III. – TOBACCO PRODUCTS

Section 73-24. Prohibitions.

It shall be unlawful for any person to sell, offer for sale, give away, or deliver any tobacco product, to any person under the age of twenty-one (21) years. If any person suspects that a minor is attempting to purchase or obtain any tobacco product, such person shall request and examine identification from the purchaser or acquirer and positively establish the purchaser's or acquirer's age as twenty-one (21) or greater before allowing the purchase or delivery of such products to occur.

Section 73-25. Age Verification.

Before distributing any tobacco product, or products regulated by this Article the distributor shall verify that the recipient is at least twenty-one (21) years of age. Distributors must verify the legal sales age by examining the recipient's government-issued identification. Verification is not required for a person over the age of thirty (30). That a recipient appeared to be thirty (30) years of age or older shall not constitute a defense to a violation of this section.

Section 73-26. Signage.

No person may sell or permit the sale of tobacco products or electronic cigarettes in the City of Vero Beach unless a clearly visible notice is posted at the location where tobacco products are available for purchase, which shall state and be legibly printed in letters at least one-half inch high that "The sale of tobacco products and electronic cigarettes to persons under the age of 21 is against City of Vero Beach law. Proof of age is required for purchase."

Section 73-27 —73-30. Reserved.

ARTICLE IV. – ENFORCEMENT

Section 73-31. Enforcement; penalties.

This chapter shall be enforced as provided in the code enforcement ordinance, chapter 2, article VII, section 2-261 et seq. of this Code, subject however, to the following:

(a) In response to a first violation of sections 73-21, 73-22, subsection 73-23(a), 73-24, 73-25, or 73-26, a written warning with no civil penalty assessed shall be issued to the violator in order to inform the violator of the violation and encourage compliance with the law. For a subsequent violation the violator may be issued a code enforcement citation and assessed the appropriate civil penalty specified in section 2-300 of this Code, notwithstanding the violations occur at different locations.

(b) In response to a first observation of a violation of subsection 73-23(b), a written warning and notice to comply with subsection 73-23(b) within thirty (30) days shall be issued to the proprietor or other person in charge of the enclosed indoor workplace in order to inform such person of the violation and encourage compliance with the law. For a subsequent observation of a

violation of subsection 73-23(b) after expiration of the thirty (30) day period the proprietor or other person in charge may be issued a code enforcement citation and assessed the appropriate civil penalty specified in section 2-300 of this Code. Such subsequent observation of a violation of subsection 73-23(b) in the enclosed indoor workplace establishes a rebuttable presumption of a violation of subsection 73-23(b).

Section 3 – Conflict and severability.

In the event any provision of this Ordinance conflicts with any other provision of the Code or other applicable law, the more strict provision shall apply and supersede. If any phrase or portion of this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion.

Section 4 – Codification.

The provisions of this Ordinance shall be codified in the Code of the City of Vero Beach, Florida.

Section 5 – Effective Date.

This Ordinance shall become effective immediately upon adoption by the City Council.

This Ordinance was read by title for the first time on the 21st day of July 2020, and was advertised on the 8th day of August 2020, for a public hearing to be held on the 18th day of August 2020, at the conclusion of which hearing it was moved for adoption by Councilmember Moss, seconded by Councilmember Brackett, and adopted by the following vote of the City Council:

Mayor Anthony W. Young	<u>yes</u>
Vice-Mayor Laura Moss	<u>yes</u>
Councilmember Robbie Brackett	<u>yes</u>
Councilmember Joe Graves	<u>yes</u>
Councilmember Rey Allen Neville	<u>yes</u>

ATTEST:

CITY OF VERO BEACH, FLORIDA

Tammy K. Bursick
Tammy K. Bursick
City Clerk

By: Anthony W. Young
Anthony W. Young
Mayor

Seal:

Date: 8-18-2020

ADMINISTRATIVE REVIEW
(For Internal Use Only—Sec. 2-77 COVB Code)

Approved as to form and
legal sufficiency:

Approved as conforming to
municipal policy:

John S. Turner
John S. Turner
City Attorney

Monte K. Falls
Monte K. Falls, P.E.
City Manager

Approved as to technical requirements:

Approved as to technical requirements:

David E. Currey
David E. Currey
Chief of Police

Jason H. Jeffries
Jason H. Jeffries, AICP
Planning & Development Director