

CITY OF EDGEWATER
ORDINANCE NO. 2021 - 13
SERIES OF 2021

AN ORDINANCE: (1) AMENDING CHAPTER 6, ARTICLE 14, OF THE EDGEWATER MUNICIPAL CODE, CONCERNING REQUIREMENTS FOR AND LIMITATIONS ON THE SALE OF TOBACCO PRODUCTS, BY AMENDING SECTIONS 6-14-30 AND 6-14-50 TO PROHIBIT THE SALE OF FLAVORED TOBACCO PRODUCTS, AND BY AMENDING SECTION 6-14-100 CONCERNING ENFORCEMENT AND COMPLIANCE MONITORING TO REQUIRE AT LEAST TWICE ANNUAL COMPLIANCE CHECKS; AND (2) AMENDING CHAPTER 10, ARTICLE 7 OF THE CODE BY AMENDING SECTION 10-7-60, TO ELIMINATE THE OFFENSE OF THE PURCHASE OF TOBACCO BY MINORS.

WHEREAS, the City Council of the City of Edgewater finds that the use of tobacco products presents grave health risks, including but not limited to nicotine addiction; and

WHEREAS, nicotine solutions, which are consumed via electronic smoking devices such as electronic cigarettes, are frequently sold in many flavors that appeal to youth; and

WHEREAS, flavored tobacco products promote youth initiation of tobacco use and help young occasional smokers to become daily smokers by reducing or masking the natural harshness and taste of tobacco smoke, thereby increasing the appeal of tobacco products; and

WHEREAS, beyond the harmful effects of nicotine, vaping nicotine-free fluids or solutions can affect vascular function or result in exposure to cancer-causing, or carcinogenic, compounds, potentially leading to long-term harmful consequences; and

WHEREAS, the City of Edgewater has a substantial interest in discouraging the illegal sales of tobacco and nicotine products to minors and persons and promoting compliance with laws prohibiting the sale of tobacco products to minors; and

WHEREAS, the City Council finds that there is a financial incentive to tobacco retailers to sell tobacco products to minors and persons under the age of twenty-one years, which incentive too often results in the unlawful sale (directly and indirectly) of tobacco products to minors; and

WHEREAS, the City Council finds that the establishment herein of substantive limitations on the sale of flavored tobacco products, including nicotine-free vapor products, will protect the health, safety and welfare of the public, by encouraging responsible tobacco product retailing, reducing the sales of tobacco products to minors and persons under twenty-one years of age in Edgewater, and reducing the number of adolescents and young adults who start using e-cigarettes.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EDGEWATER, COLORADO, THAT:

Section 1. Section 6-14-30 of the Edgewater Municipal Code, concerning the definition of terms for purposes of Article 4 of Chapter 6 of the Code, titled “Tobacco Product Retailer License and Regulations,” is hereby amended by the addition of the following definitions, to be placed in said section in their appropriate alphabetical order:

Characterizing Flavor means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include without limitation tastes or aromas relating to food or drink of any sort of fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herbs, or spices.

Flavored Tobacco Product means any tobacco product that imparts a characterizing flavor.

Section 2. Section 6-14-50 of the Edgewater Municipal Code, concerning limitation on tobacco product sales, is hereby amended to read in its entirety as follows:

Sec. 6-14-50. Minimum legal sales age and other limitations on tobacco product retailing.

(a) *Minimum legal sales age and requirements of positive identification.* It is unlawful to sell or distribute a tobacco product to a person under the age of twenty-one (21) years. No licensee shall sell or transfer a tobacco product without first examining the government-issued photographic identification of the recipient to confirm that the recipient is at least twenty-one (21) years of age.

(b) *Minimum age for persons selling tobacco products.* Licensees shall not allow, permit or require any person who is younger than the age of eighteen (18) years to sell a tobacco product during the course of operation of the business.

(c) *No unaccompanied minors permitted in retail tobacco businesses.*
Except as may be permitted under subsection (b) of this section, a licensee shall not allow or permit a person who is younger than twenty-one (21) years of age to be admitted or remain upon the licensed premises of a retail tobacco business, unless such person is accompanied by his or her parent or guardian. The licensee of a retail tobacco business shall post and keep at all times visible to the public in a conspicuous place on the licensed premises, a sign to be provided by the City Clerk’s office which shall read as follows:

WARNING: It is a violation of the Edgewater Municipal Code for any person under twenty-one (21) years of age to be on the premises of this business unless accompanied by their parent or guardian.

- (d) *Self-service display prohibited.* Except at a location where persons under twenty-one (21) years of age are prohibited from entry, it is unlawful for a licensee to engage in tobacco product retailing by means of a self-service display.
- (e) *Signage required.* No person shall distribute a tobacco product in the City unless a clearly visible notice is posted at the location where the tobacco product is distributed, which notice shall state, legibly printed in letters at least one-half inch in height, "No tobacco or nicotine sales to any person under the age of twenty-one (21) ~~may purchase tobacco or an electronic smoking device.~~"
- (f) *Distribution of flavored tobacco products prohibited.* On and after November 1, 2021, it is unlawful to sell, offer for sale, or distribute a flavored tobacco product within the City.

Section 3. Section 6-14-100 of the Edgewater Municipal Code, concerning compliance monitoring of tobacco product sales, is hereby amended to read in its entirety as follows:

Sec. 6-14-100. - Compliance monitoring.

- (a) Subject to the requirements of subsection (b) below, ~~C~~compliance monitoring of this Article shall be by the Department, as the Department deems appropriate, to allow the Department to determine if a tobacco product retailer is conducting business in a manner that complies with this Article.
- (b) The Department shall, at least twice annually, conduct a compliance check of each tobacco product retailer that is licensed by the City to determine if the retailer is conducting business in a manner that complies with this Article. Each compliance check shall, at a minimum, include investigation concerning whether the retailer is complying with the requirements and limitations of this Article that concern the minimum purchase age for tobacco products, and the prohibition of the sale of flavored tobacco products. ~~have the discretion to consider the previous compliance check history of a licensee in determining how frequently to conduct compliance checks of a licensee.~~
- (c) Nothing in this section shall create a right of action in any licensee or other person against the City, the Department or their agents and officers.
- (d) The Department shall not enforce any law establishing a minimum age for tobacco purchases or possession against a person who otherwise might be in violation of such law because of the person's age (hereinafter "minor operative") if the potential violation occurs when:

- (1) The minor operative is participating in a compliance check supervised by a peace officer or a code enforcement official of the Department; or
 - (2) The minor operative is acting as an agent of a person designated by the City to monitor compliance with this Article; or
 - (3) The minor operative is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the State of Colorado or Jefferson County Department of Health and Environment or the Colorado Department of Health and Environment.
- (e) The results of Department compliance monitoring activities shall be provided by the Department to the City Clerk and the City Clerk shall maintain a database of such activities on a license-by-license basis.

Section 4. Section 10-7-60 of the Edgewater Municipal Code, concerning the selling of tobacco to minors, is hereby amended to read in its entirety as follows:

Sec. 10-7-60. Selling tobacco to persons under twenty-one (21) years of age.

(a) For purposes of this ~~Code section~~, the term ~~following words shall have the meanings ascribed hereafter:~~ "Tobacco products" has the meaning set forth in Section 6-14-30 of this Code.

(b) It is unlawful for any person to furnish to any person who is under twenty-one (21) years of age by gift, sale or any other means any tobacco products. It shall be an affirmative defense to a prosecution under this Subsection that the person furnishing the tobacco products was presented with and reasonably relied upon a valid state driver's license or other government-issued form of photographic identification which identified the person receiving the cigarettes or tobacco products as being twenty-one (21) years of age or older.

~~(c) It is unlawful for any person under the age of twenty one (21) to purchase or attempt to purchase any tobacco products as defined in Subsection (a) of this Section.~~

~~(d) No retailer shall sell or permit the sale of any tobacco products by use of a vending machine or other coin-operated machine except at a location where persons under twenty-one (21) years of age are prohibited from entry.~~

Section 5. Severability. If any section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision

shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 6. Safety Clause. The City Council hereby finds, determines, and declares that this ordinance is promulgated under the general police power of the City, that it is promulgated for the health, safety, and welfare of the public, that this ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare, and that this ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 7. Effective Date. This ordinance shall become effective five (5) days after final publication.

INTRODUCED, READ, PASSED ON FIRST READING AND ORDERED PUBLISHED this 20th day of July, 2021.

/s/ Laura Keegan
Laura Keegan, Mayor

ATTEST:

/s/ L Pedroza
Lenore Pedroza, CMC, City Clerk

PASSED AND ADOPTED ON SECOND READING AND ORDERED PUBLISHED this 3rd day of August, 2021.

/s/ Laura Keegan
Laura Keegan, Mayor

ATTEST:

/s/ L Pedroza
Lenore Pedroza, CMC, City Clerk

APPROVED AS TO FORM:

/s/ Thad Renaud
Thad Renaud, City Attorney