

## ORDINANCE NO. 1560

An ordinance amending Sections 22-17, 22-17.1, and 22-17.2, of the Ordinances for the City of Jamestown, North Dakota.

WHEREAS, the City of Jamestown has the authority under N.D.C.C. §12.1-31-03(5) to adopt ordinances regarding the sale of tobacco products;

WHEREAS, the legislature has updated the corresponding century code sections pertaining to the prohibition against the use of tobacco products by individuals under the age of twenty-one;

WHEREAS, the City desires to update its ordinance to reflect these most recent changes.

NOW THEREFORE, be it ordered by the City of Council of the City of Jamestown, North Dakota, that Sections 22-17, 22-17.1, and 22-17.2 shall be amended and re-enacted as follows:

**Sec. 22-17. - Sale of tobacco products to individuals under the age of twenty-one and use and possession by individuals under the age of twenty-one prohibited.**

(a) It is an infraction for any person to sell or furnish, or procure, cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing, including electronic smoking devices or alternative nicotine products, to an individual under twenty-one (21) years of age. As used in this subsection, "sell" includes dispensing from a vending machine under the control of the entity or actor.

(b) It shall be a noncriminal offense for an individual under twenty-one (21) years of age to purchase, attempt to purchase, smoke, possess, or use cigarettes, cigars, cigarette papers, snuff, tobacco in any other form which may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products. However, an individual under twenty-one (21) years of age may purchase and possess tobacco, electronic smoking devices, or alternative nicotine products as part of a compliance survey program when acting with the permission of the individual's parents or guardian and while acting under the supervision of the Jamestown Police Department. A state agency, city, county, board of health, tobacco retailer, or association of tobacco retailers may also conduct compliance surveys, after coordination with the Jamestown Police Department. An individual fourteen years of age or older found to have violated this subsection must pay a fee of twenty-five dollars.

(c) Subsections (a) and (b) do not apply to an individual under twenty-one (21) years of age who possesses cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be used for smoking or chewing, electronic smoking devices, or alternative nicotine products when required in the performance of the individual's duties as an employee.

(d) It is a noncriminal offense for an individual under twenty-one (21) years of age to present or offer to another individual a purported proof of age which is false, fraudulent, or not actually that individual's own proof of age, for the purpose of attempting to purchase or possess cigarettes, cigars, cigarette papers, snuff, tobacco in any other form in which it may be

utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products. An individual fourteen years of age or older found to have violated this subsection must pay a fee of twenty-five dollars.

(e) Any individual who has been cited for a violation of subsection (b) or (d) may appear before the municipal court and pay the fee by the time of the scheduled hearing, or if any bond has been posted, may forfeit the bond by not appearing at the scheduled time. Such payment or forfeiture shall be deemed an admission of the violation. The bond required to secure appearance before the court must be identical to the fee. This section does not allow a citing officer to receive a bond or fee.

(f) An individual appearing at the scheduled time in the citation for violation of subsection (b), or (d) may make a statement in explanation of that individual's action and the judge may waive, reduce, or suspend the fee or bond or both. If the individual follows the procedures of this subsection, that individual has admitted the violation and has waived the right to a hearing on the issue of commission of the violation.

(g) If an individual cited for a violation of subsection (b) or (d) does not choose to follow the procedures set forth in subsection (e) or (f), that individual may request a hearing on the issue of commission of the violation cited. The hearing must be held at the time scheduled in the citation or at some future time, not to exceed ninety (90) days later, set at the first appearance. At the time of a request for a hearing on the issue on commission of the violation, the individual cited shall deposit with the court an appearance bond equal to the fee for the violation cited.

(h) The failure to post a required bond, or pay an assessed fee by an individual found to have violated this section is punishable as contempt of court, except an individual under twenty-one years of age may not be imprisoned for the contempt.

(i) If the individual has requested a hearing, at such hearing the prosecution must prove the commission as a cited subsection (b) or (d) by a preponderance of the evidence.

(j) A law enforcement officer that cites a minor for violation of this section shall mail a notice of the violation to the parent or legal guardian of the minor within ten (10) days of the citation.

(k) A person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced by the court to a sanction or order designed to ensure compliance with the payment of the fee or fine, or to an alternative sentence of sanction including community service.

(l) As used in this section and in 22-17.1 and 22-17.2:

(1) "Alternative nicotine product" means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. The term does not include any cigarette, cigar, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, any electronic smoking device, or any product regulated as a drug or device by the United States food and drug administration under chapter V of the Federal Food, Drug, and Cosmetic Act [21 U.S.C 501 et seq.].



(2) "Electronic smoking device" means any electronic product that delivers nicotine or other substances to the individual inhaling from the device, including, an electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of such a product, whether or not sold separately. electronic smoking device does not include drugs, devices, or combination products approved for sale by the United States food and drug administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.].

(3) A "person" or "entity" shall be defined to be any natural person, corporation, partnership, association, limited liability company, or the employee or agent of any such person or entity including, but not limited to, any such person or entity licensed as a tobacco dealer under section 22-17.

**Sec. 22-17.1. - Vending machines, Self-Service Displays and Sale of E-liquids to Minors.**

(a) For the purposes of this section and section 22-17:

(1) "vending machine" shall mean a machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or other means of payment that is designed or used for vending purposes, including machines or devices that use remote control locking mechanisms.

(2) "Self-service display" means a display that contains cigarettes, cigarette papers, cigars, snuff, tobacco in any other form which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products and is located in an area that is openly accessible to the retailer's customers, and from which customers can readily access those products without the assistance of a salesperson. A display case that holds those products behind locked doors does not constitute a self-service display.

(3) "Tobacco specialty store" means a retail store that:

- a. Derives at least seventy-five percent of its revenue from the sale of cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products; and
- b. Does not permit minors to enter the premises unless accompanied by a parent or legal guardian.

(b) It shall be an infraction for any person to display or offer for sale cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through a self-service display. This subdivision does not apply to a:

- (1) A vending machine that is located in an area in which individuals under Twenty-one years of age are not permitted access; or
- (2) Self-service display that is located in a tobacco specialty store.

(c) It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices or alternative nicotine products through a vending machine. This does not apply to:

- (1) A vending machine that is located in an area in which individuals under Twenty-one years of age are not permitted access; or

- (2) A vending machine that dispenses cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices or alternative nicotine products through the operation of a device that requires a salesperson to control the dispensation of such product.
- (d) It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices or alternative nicotine products through any vending machine, if those products are placed together with any nontobacco product, other than matches, in the vending machine.
- (e) A person may not sell, offer for sale, or distribute in this City any flavored e-liquid or electronic smoking device containing flavored e-liquid to an individual under twenty-one years of age. A person that violates this subsection, who is not a manufacturer, shall be found guilty of an infraction and is subject to a fine of five hundred dollars for each individual package of flavored e-liquid product or electronic smoking device containing flavored e-liquid sold or offered for sale.

#### **Sec. 22-17.2. - Tobacco dealers.**

(a) *License required.* No person shall, directly or indirectly or by means of device, offer or dispose of, or give away, or cause to be offered or exposed for sale, exchanged, bartered, disposed of, or given away, any cigarettes, cigarette papers, cigars, snuff, or tobacco in any form in which it may be utilized for smoking or chewing, including electronic smoking devices or alternative nicotine products as defined in 22-17 at any place in the city without being licensed under this chapter. Use of a vending machines shall require a license under this chapter. In the case of a vending machine, the license shall be held by the person or organization which has control and supervision of the premises.

(b) *Application for license; referral and action.*

- (1) Any person desiring to obtain a tobacco dealers license shall file with the city auditor a written application to the city council which shall include the following:
- a. The full name of the applicant.
  - b. The address of the applicant.
  - c. The location of the building or buildings, and any part or portion thereof, intended to be used by the applicant under such license.
  - d. Whether such license shall be used on certain vehicles for the sale of food or drink.
  - e. A copy of the applicant's state license or a copy of the state license held by the owner of the vending machine if other than the applicant.
  - f. The required license fee.
  - g. A statement of particulars relative to any prior convictions for violations of this section or similar laws.
  - h. An acknowledgment of the provisions of this chapter and any relevant laws or ordinances pertaining to the sale of tobacco products.
  - i. The date of the application and the signature of the applicant.
- (2) Upon receipt of a completed license application, the city auditor shall approve and issue such license. In the event the city auditor determines that the application, based upon the



information available, should instead be issued and approved by the city council, the auditor shall place the matter before the council at its next scheduled meeting.

(d) *License fee.* The annual license fee shall be as established, from time to time, by resolution of the city council.

(e) *Expiration date.* All licenses issued under this chapter shall expire on March 31 of each year.

(f) *Suspension or nonrenewal.*

(1) A license granted under this chapter may be suspended or not renewed by the mayor for violation of section 22-17 or 22-17.1 or any other provision of this chapter, or any city ordinance or state law regulating the sale of tobacco products. Every act or omission of whatever nature, constituting a violation of the provisions of this section by any officer, director, manager or other agent or employee of any licensee shall be deemed and held to be the act of such licensee; and such licensee shall be punishable in the same manner as if such act or omission had been done or omitted by the licensee personally.

(2) The mayor may suspend or not renew a retail tobacco dealer's license after notice and hearing upon a finding by clear and convincing evidence by the mayor of a violation of this section or any provision of state law or city ordinance regulating the sale of retail tobacco by a retail tobacco dealer licensed through this section. The mayor may suspend or not renew such license for a period of time not less than three (3) days nor more than thirty (30) days, but only after a public hearing, for which the licensee has had at least fourteen (14) days' notice, which notice shall state the time and place of the hearing and the alleged violation. In addition to such suspension or in lieu thereof, the mayor may levy a fine of up to five hundred dollars (\$500.00). If, after notice of hearing as herein provided, the mayor shall find that the retail tobacco licensee or dealer shall have a subsequent violation within one (1) year of a prior finding of violation of state law or city ordinance regulating the sale of tobacco, any suspension ordered by the mayor shall be for a period of not more than six (6) months. Any hearing before the mayor under this section shall be not more than forty (40) days from the date of the notice of hearing. The mayor shall advise the city council of any such action taken.

(3) The hearing before the mayor shall be transcribed by electronic means and a copy of said proceedings shall be made available to the licensee upon written request and payment of costs of reproduction.

(4) The written notice of hearing contemplated herein shall provide the time and place of hearing and a brief description of the time, place, and circumstances of the alleged violation.

(g) *Appeal.*

(1) In the event the mayor enters an order of suspension or nonrenewal, the licensee may appeal such decision to the city council by filing a written notice of appeal thereof with the city auditor's office within ten (10) days of the service of the mayor's order

upon the licensee. The city council shall hear such appeal within forty (40) days of the date of receipt of the request for appeal.

(2) Upon appeal to the city council, which shall be based solely upon the record provided, the city council shall either sustain or overrule the order of the mayor.

(3) Any suspension or revocation ordered shall not go into effect until the later of the expiration of the time for appeal or the entering of the order of the city council upon appeal.

(4) Any decision made by the city council shall considered final.

(h) *Defense.* Any licensee may keep a book and may require anyone who has shown documentary proof of age, which substantiates his or her age to legally purchase tobacco products, to sign the book if the age of that person is in question. The book must show the date of purchase, the identification used in making the purchase and the appropriate numbers of such identification, the address of the purchaser, and the purchaser's name and signature. The establishment of all of the following facts by a person making the sale of tobacco products to a person not of legal age constitutes prima facie evidence of innocence and a defense to any prosecution therefore:

(1) That the purchaser falsely represented and supported with other documentary proof that he or she was of legal age to purchase tobacco products.

(2) That the appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal age to purchase tobacco products.

(3) That the sale was made in good faith and in reliance upon the representation and appearance of the purchaser in the belief that the purchaser was of legal age to purchase tobacco products.

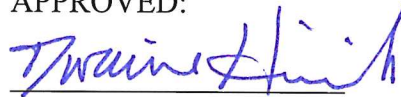
Any licensee that does not keep a book of the kind described in this section may not avail itself of the above presumptions.

ATTEST:



Sarah Hellekson  
City Administrator

APPROVED:



Dwaine Heinrich  
Mayor

Introduced by Council Member Kamlitz

Seconded by Council Member Schloegel

First Reading: April 4, 2022

Second Reading: May 2, 2022

Final Passage: May 2, 2022

Roll Call No. 2 showed: 5 ayes, 0 nays, 0 absent.