

FIRST READING: April 2, 2019

SECOND READING: April 16, 2019

ORDINANCE NO. 6289

AN ORDINANCE AMENDING CHAPTER 7.50 OF THE LOVELAND MUNICIPAL CODE CONCERNING TOBACCO PRODUCTS AND MINORS

WHEREAS, the City of Loveland, Colorado ("City") is authorized to enact this Ordinance pursuant to C.R.S. §25-14-301, prohibiting the possession of cigarettes, tobacco products, or nicotine products by minors; and

WHEREAS, the State of Colorado has, in C.R.S. §25-14-301, banned the sale or giving to a minor any tobacco product, including any device that can be used to deliver nicotine by inhalation, such as an electronic smoking device; and

WHEREAS, in 1995, the City passed Ordinance 4135, prohibiting the possession of cigarettes and tobacco products by minors and amended Chapter 7.50 again in 1997 through Ordinance 4271; and

WHEREAS, the State legislature recently amended section 18-13-121 (5), C.R.S., in order to update the definition of tobacco products to include emerging alternate means of ingesting nicotine, including any device that can be used to deliver nicotine by inhalation, such as an electronic smoking device; and

WHEREAS, the City desires similarly to update the definition of tobacco products contained in the aforementioned Ordinance; and

WHEREAS, the City Council has determined that these proposed amendments to the City Code are desirable and in the best interest of the City as these amendments provide protection of the health, safety, and welfare of the public.

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

Section 1. Repeal and Reenactment. Chapter 7.50 of the Loveland Municipal Code is repealed in its entirety and reenacted to read as follows:

7.50.010 Intent.

It is the intent of this Chapter to protect the public health, safety, and welfare by prohibiting the possession and use of tobacco products by minors and by prohibiting the dissemination and furnishing of tobacco products to minors.

7.50.020 - Definitions.

As used in this chapter, the following words or phrases are defined as follows:

A. "Minor" means any person younger than eighteen years of age.

B. "Smoking" means the holding or carrying of a tobacco product, lighted pipe, lighted cigar, or lighted cigarette of any kind and includes the lighting of a pipe, cigar, or cigarette of any kind.

C. "Tobacco Product" means a product that contains nicotine, tobacco, synthetic tobacco, clove cigarettes (known also as kreteks or bidi cigarettes), tobacco derivatives, or any other plant, organic, or synthetic matter containing nicotine, which is intended to be ingested, absorbed, inhaled, chewed, or applied to the skin of an individual. "Tobacco Product" shall also include any device, component device, accessory, or apparel that can be used to deliver nicotine, tobacco, synthetic tobacco, clove cigarettes (known also as kreteks or bidi cigarettes), tobacco derivatives, or any other plant, organic, or synthetic matter containing nicotine to the person ingesting, absorbing, or inhaling from the device, component device, accessory, or apparel, including, but not limited to, an electronic cigarette, cigar, cigarillo, vaporizer, vape pen, or pipe. "Tobacco Product" shall not include a product that the food and drug administration of the United States department of health and human services has approved as a tobacco use cessation product..

D. "Retailer" means any person who sells cigarettes, tobacco products, or smokeless tobacco to individuals for personal consumption or who operates a facility where vending machines or self-service displays are permitted under this chapter.

7.50.030 Unlawful possession or use of tobacco products by minors.

A. It shall be unlawful for any minor to knowingly possess, consume, or use, either by smoking, ingesting, absorbing, or chewing, any tobacco product.

B. It shall be unlawful for any minor to knowingly obtain or attempt to obtain any tobacco product by misrepresentation of age or by any other method.

C. It shall be rebuttably presumed that the substance within a package or container is a tobacco product if the package or container has affixed to it a label which identifies the package or container as containing a tobacco product.

D. The court may, in its discretion and as part of the sentence to be imposed, permit a person convicted of violating any portion of this section to complete court-approved public service in an amount to be set by the court. Additionally, upon the first conviction of any person, the court shall emphasize education as a component of any sentence.

7.50.040 Unlawful furnishing of tobacco products to minors.

A. It shall be unlawful for any person to knowingly furnish to any minor, by gift, sale, or any other means, any tobacco product.

B. Each retailer shall verify by means of photographic identification containing the bearer's date of birth that a person purchasing a tobacco product is eighteen years of age or older. No such verification is required for any person who reasonably appears to be over the age of twenty-six. It shall be an affirmative defense to a prosecution under this section that the person furnishing the tobacco product was presented with and reasonably relied upon photographic identification containing the bearer's date of birth which identified the minor receiving the tobacco product as being eighteen years of age or older.

7.50.050 Retail sale of tobacco products.

A. It shall be unlawful for any business proprietor, manager, or other person in charge or control of a retail business of any kind to engage, employ or permit any minor to sell tobacco products from such retail business.

B. It shall be unlawful for any business proprietor, manager, or other person in charge or control of a retail business of any kind to stock or display a tobacco product in any way which allows a customer to access such tobacco product without first securing the physical assistance of an adult business employee for each transaction. The provisions of this subsection B. shall not apply to vending machines meeting the requirements of section 7.50.060 of this code.

7.50.060 Vending machines.

A. It shall be unlawful for any person to sell or offer to sell any tobacco product by use of a vending machine or other coin-operated machine, except that tobacco products may be sold at retail through vending machines only in places to which minors are not permitted access and such vending machine is under the direct supervision of the owner of the establishment or an adult employee of the owner.

B. It shall be unlawful for any person to possess or allow upon premises controlled by such person an operable vending machine containing any tobacco product unless such vending machine is located in a place where minors are not permitted access and such vending machine is under direct supervision of the owner of the establishment or an adult employee of the owner.

C. As used in this section, "under direct supervision" means the vending machine shall be in plain vision of the adult employee or owner during regular business hours.

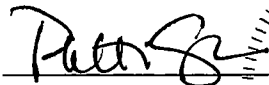
Section 2. Severability. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect the remaining provisions of this ordinance.

Section 3. Safety Clause. The Council finds and declares that this ordinance is promulgated and adopted for the public health, safety and welfare and this ordinance bears a rational relation to the legislative object sought to be obtained.

Section 4. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect (10) days after publication following final adoption, as provided in City Charter Section 4-8(b).

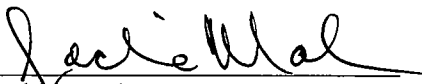
ADOPTED this 16th day of April, 2019.

ATTEST:



Patti Garcia, City Clerk




Jackie Marsh, Mayor

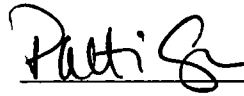
APPROVED AS TO FORM:


Assistant City Attorney

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Ordinance 6289

I, Patti Garcia, City Clerk of the City of Loveland, Colorado, hereby certify that the above and foregoing Ordinance was introduced at a regular (or special) meeting of the City Council, held on April 2, 2019 and was initially published in the Loveland Daily Reporter-Herald, a newspaper published within the city limits, in full on April 6, 2019 and by title except for parts thereof which were amended after such initial publication which parts were published in full in said newspaper on April 20, 2019.



City Clerk

Effective Date: April 30, 2019

