

ORDINANCE NO. 20 - _____

AN ORDINANCE AMENDING SECTION 102 (DEFINITIONS), SECTION 105 (PROHIBITION ON SALE OF CIGARETTES OR TOBACCO PRODUCTS IN VENDING MACHINES), AND SECTION 106 (TOBACCO PRODUCT PLACEMENT) OF PART 1 (NO SMOKING IN PUBLIC PLACES OR WORKPLACES EXCEPT IN THOSE AREAS DESIGNATED FOR SMOKING) OF ARTICLE 6 (PUBLIC HEALTH AND SANITATION – NO SMOKING IN PUBLIC PLACES) OF CHAPTER 6 (NEIGHBORHOOD VITALITY/COMMUNITY HEALTH) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO LIMITATIONS ON TOBACCO PRODUCTS IN VENDING MACHINES AND TOBACCO PRODUCT PLACEMENT AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF

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

Section 1. Section 102 (Definitions) of Part 1 (No Smoking In Public Places or Workplaces Except In Those Areas Designated For Smoking) of Article 6 (Public Health and Sanitation – No Smoking in Public Places) of Chapter 6 (Neighborhood Vitality/Community Health) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

6.6.102: DEFINITIONS:

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TOBACCO PRODUCT: As used in this section, “TOBACCO PRODUCT” means:

A. Any product which contains, is made or derived from tobacco or used to deliver nicotine, synthetic nicotine or other substances intended for human consumption, whether heated, chewed, applied to the skin, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means, including, but not limited to Cigarettes, Cigars, Little Cigars, chewing tobacco, pipe tobacco, snuff, bidis, snus, nicotine product, mints, hand gels;

B. Any device that can be used to deliver tobacco or nicotine to the person inhaling from the device, including an e-cigarette, e-cigar, e-pipe, e-hookah, vape pen, or other electronic smoking device;

C. The term “Tobacco Product” does not include:

1. Any product that contains marijuana; and

2. Any product made from or derived from tobacco and approved by the Food and Drug Administration (FDA) for use in connection with cessation of smoking.

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Section 2. Section 105 (Prohibition on Sale of Cigarettes or Tobacco Products in Vending Machines) of Part 1 (No Smoking In Public Places or Workplaces Except In Those Areas Designated For Smoking) of Article 6 (Public Health and Sanitation – No Smoking in Public Places) of Chapter 6 (Neighborhood Vitality/Community Health) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

6.6.105: PROHIBITION ON SALE OF CIGARETTES OR TOBACCO PRODUCTS IN VENDING MACHINES:

* * *

B. Prohibition: No person shall install, keep, maintain, or permit the location, installation, keeping, maintenance or use on premises over which they have control, any vending machine for the purpose of selling or distributing cigarettes or tobacco products. ~~except in the following locations:~~

~~1. Private clubs, businesses or factories that do not permit or employ persons under the age of eighteen (18).~~

~~2. Licensed sexually oriented businesses which do not permit or employ persons under the age of eighteen (18).~~

* * *

C. Impoundment:

1. The City Council hereby finds and determines that vending machines which sell or distribute cigarettes or tobacco products, ~~except those in places that are not open to the general public and places to which persons under the age of eighteen (18) are not permitted,~~ are public nuisances, and any vending machine found which sells or distributes cigarettes or tobacco products shall be removed and impounded at the expense of the operator by the Police Department. Any vending machine removed under the provisions of this section shall be taken to a place designated by the Police Department for storage and maintenance. No action for the recovery of or compensation for damages to or loss from a vending machine impounded under the provisions of this Code shall be maintained against the City when the machine was found to be selling or distributing cigarettes or tobacco products.

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Section 3. Section 106 (Tobacco Product Placement) of Part 1 (No Smoking In Public Places or Workplaces Except In Those Areas Designated For Smoking) of Article 6 (Public Health and Sanitation – No Smoking in Public Places) of Chapter 6 (Neighborhood Vitality/Community Health) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

6.6.106: TOBACCO PRODUCT PLACEMENT:

It shall be unlawful for any person to sell or display, offer to sell or display or permit to be sold or displayed any tobacco product in a manner that it can be reached or purchased by customers under the age of **twenty-one (21)** ~~eighteen (18)~~ without the product being requested from and provided by an employee of the establishment, except as provided in subsections 6.6.105(B)(1) through (B)(3) of this part. This section shall not apply to any retail establishment having seventy five percent (75%) of its gross income derived from the sale of tobacco, tobacco products or products related to the use of tobacco or tobacco products.

Section 4. Any person in violation of Section 105 (Prohibition on Sale of Cigarettes or Tobacco Products in Vending Machines) of Part 1 (No Smoking In Public Places or Workplaces Except In Those Areas Designated For Smoking) of Article 6 (Public Health and Sanitation – No Smoking in Public Places) of Chapter

6 (Neighborhood Vitality/Community Health) shall be subject to the removal and impoundment procedures set forth in this Section 105 (Prohibition on Sale of Cigarettes or Tobacco Products in Vending Machines) of Part 1 (No Smoking In Public Places of Workplaces Except In Those Areas Designated For Smoking) of Article 6 (Public Health and Sanitation – No Smoking in Public Places) of Chapter 6 (Neighborhood Vitality/Community Health) of the Code of the City of Colorado Springs 2001, as amended.

Section 5. Any person convicted of a violation of Section 106 (Tobacco Product Placement) of Part 1 (No Smoking In Public Places or Workplaces Except In Those Areas Designated For Smoking) of Article 6 (Public Health and Sanitation – No Smoking in Public Places) of Chapter 6 (Neighborhood Vitality/Community Health) shall be punished as provided in Section 201 (General Penalty) and Section 202 (Minor Offenders) of Part 2 (General Penalty) of Article 1 (Administration) of Chapter 1 (Administration, Personnel, and Finance) and Section 104 (Right to Trial by Jury; Jail; Exceptions) of Part 1 (Trial by Jury) of Article 4 (Jury Provisions) of Chapter 11 (Municipal Court) of the Code of the City of Colorado Springs 2001, as amended.

Section 6. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 7. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this ____
day of _____, 2020.

Finally passed: _____

Council President

Mayor's Action:

- Approved on _____.
- Disapproved on _____, based on the following objections:

Mayor

Council Action After Disapproval:

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of _____, on _____.
- Council action on _____ failed to override the Mayor's veto.

Council President

ATTEST:

Sarah B. Johnson, City Clerk