

ORDINANCE NO. 19
BOARD OF COUNTY COMMISSIONERS
OF THE
COUNTY OF SUMMIT
STATE OF COLORADO

ORDINANCE NO. 19 ADOPTING LICENSING REQUIREMENTS AND REGULATING THE SALE OF CIGARETTES, TOBACCO PRODUCTS AND ELECTRONIC SMOKING DEVICES.

WHEREAS, the General Assembly of the State of Colorado empowers counties with the authority to adopt and enforce ordinances and resolutions regarding health, safety and welfare issues, including without limitation the regulation of cigarettes, tobacco products and electronic smoking devices; and

WHEREAS, the requirement for a Tobacco Product Retailer License, as defined below, will not unduly burden legal business activities of retailers who sell tobacco products; and

WHEREAS, cigarettes are designed and manufactured to be addictive, such that smoking initiation leads to dependence and difficulty quitting; and

WHEREAS, youth use of e-cigarettes and similar products is associated with future cigarette use; and

WHEREAS, the Centers for Disease Control and Prevention has reported a more than 800% increase in electronic cigarette use among middle school and high school students between 2011 and 2015; and

WHEREAS, studies have shown that approximately 96 percent of smokers begin smoking before age 21, with most beginning before age 16, and smokers frequently transition from experimentation to addiction between the ages of 18 and 21; and

WHEREAS, the availability of inexpensive tobacco products leads to increased tobacco use; and

WHEREAS, price reduction strategies are used by the tobacco industry to counter state and local efforts and appeal to price sensitive consumers; and

WHEREAS, studies have shown that intervention that increases the unit price for tobacco products by 20% would reduce overall consumption of tobacco products by 10.4%, prevalence of adult tobacco product use by 3.6%, and initiation of tobacco product use by young people by 8.6%.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF SUMMIT AND STATE OF COLORADO THAT:

It is the intent of the Board of County Commissioners in enacting this ordinance, to ensure compliance with those business standards and practices of the County that encourage responsible tobacco product retailing and discourage violations of laws and regulations related to cigarette, tobacco products and tobacco paraphernalia as defined herein but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein. This Ordinance shall apply throughout the unincorporated area of Summit County.

SECTION I. DEFINITIONS.

For purposes herein:

- A. “*Applicant*” means a person who has submitted an application for a License pursuant to this Ordinance.
- B. “*Board*” means the Board of County Commissioners of the County of Summit and State of Colorado.
- C. “*Cigarette*” means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:
 - 1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;
 - 2) Tobacco in any form that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to, or purchased by consumers as a cigarette; or
 - 3) Any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (1) of this definition.
 - 4) The term “cigarette” includes roll-your-own, i.e., any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.
- D. “*Consumer*” means a person who purchases a Tobacco Product(s) for consumption and not for Sale to another.

- E. “*County*” means the County of Summit and State of Colorado.
- F. “*Electronic Smoking Device*” means any product containing or delivering nicotine intended for human consumption that can be used by an individual to simulate smoking in the delivery of nicotine or any other substance, even if marketed as nicotine-free, through inhalation from the product. Electronic smoking device includes any refill, cartridge or component part of a product, whether or not marketed or sold separately. Electronic smoking device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco cessation product or for other medically approved or certified purposes.
- G. “*Full Retail Price*” means the price listed for Tobacco Products on the product Packaging or on any related shelving, advertising, or display where Tobacco Products are sold or offered for Sale, plus all applicable taxes and fees if such taxes and fees are not included in the list price; and
- H. “*Licensee*” means the owner or holder of a Tobacco Product Retailer License.
- I. “*License*” refers to the Tobacco Product Retailer License.
- J. “*License Administrator*” means the Summit County Clerk and Recorder or any other person(s) within the County designated by the Board of County Commissioners with responsibilities for License issuance, renewal and collection of License fees.
- K. “*Licensed Premise*” mean the physical location for which a Tobacco Product Retailer License is issued pursuant to this Ordinance.
- L. “*Manufacturer*” means any person, including a repacker or relabeler, who manufacturers, fabricates, assembles, processes or labels Tobacco Products for Sale or distribution in the United States.
- M. “*Minimum Legal Sales Age*” means twenty-one (21) years of age or older.
- N. “*Package*” or “*Packaging*” means a pack, box, carton or container of any kind or, if no other container, any wrapping (including cellophane) in which Tobacco Products are sold or offered for Sale to a Consumer.
- O. “*Sale* or “*Sell*” means any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner or by any means whatsoever.
- P. “*Tobacco Product*” means:
 - 1) Any product containing, made, or derived from tobacco or used to deliver nicotine alone or with other substances intended for human consumption, whether heated, chewed, 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, mints, hand gels; or

- 2) Any Electronic Smoking Device.
 - 3) Notwithstanding any provision of subsections (1) and (2) to the contrary, Tobacco Product includes any component, part, accessory or associated paraphernalia of a Tobacco Products, whether or not sold separately.
 - 4) The term “Tobacco Product” does not include 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.
- Q. *“Tobacco Paraphernalia”* means any item designed for the consumption or use of tobacco.
- R. *“Tobacco Product Retailer”* means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, Cigarettes, Tobacco Products and/or Tobacco Paraphernalia; this definition shall be applied without regard to the quantity of Cigarettes, Tobacco Products and/or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange. The term “Tobacco Product Retailing” shall mean the performance of any of the aforementioned activities.
- S. *“Self-Service Display”* means the open display or storage of Cigarettes, Tobacco Products and/or Tobacco Paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the Licensee or an employee of the Licensee and a direct person-to-person transfer between the purchaser and the Licensee or employee of the Licensee. A vending machine is a form of self-service display.

SECTION II. REQUIREMENTS AND PROHIBITIONS

- A. License Required. It shall be unlawful for any person to act as a Tobacco Product Retailer in the County without first obtaining and then maintaining a valid Tobacco Product Retailer License pursuant to this Ordinance for each retail location where the activity is to occur. Tobacco Product Retailing without a valid Tobacco Product Retailer License is a nuisance as a matter of law.
- B. Lawful Business Operation. In the course of Tobacco Product Retailing or in the operation of the business or maintenance of the location for which a License is issued, it shall be a violation of this Ordinance for a Licensee, or any of the Licensee’s agents or employees, to violate any local, state, or federal law applicable to Tobacco Product Retailing.
- C. Display of License. Each Tobacco Product Retailer License shall be prominently displayed on the premises of the Licensee in a publicly visible location.

- D. Display of Minimum Legal Sales Age Requirements. The requirement of the Minimum Legal Sale Age for the purchase of Cigarettes, Tobacco Products and/or Tobacco Paraphernalia shall be prominently displayed at all entrances (or other clearly visible location) of the Licensed Premise.
- E. Minimum Age for Selling Cigarettes, Tobacco Products and/or Tobacco Paraphernalia. No person who is younger than the Minimum Legal Sales Age for the purchase or possession of Cigarettes, Tobacco Products and/or Tobacco Paraphernalia shall sell, stock, retrieve or otherwise handle said products or engage in Tobacco Product Retailing.
- F. Minimum Legal Sales Age. Cigarettes, Tobacco Products and/or Tobacco Paraphernalia shall not be sold to any person under twenty-one (21) years of age.
- G. Self-Service Displays Prohibited. Tobacco Product Retailing by means of a Self-Service Display is prohibited.
- H. Packaging and Labeling. No Tobacco Product Retailer shall Sell Cigarettes and/or Tobacco Products to any Consumer unless such product:
- 1) Is sold in the original Manufacturer's Packing intended for Sale to Consumers; and
 - 2) Conforms to all applicable federal labeling requirements.
- I. Display of Price. The price of Cigarettes and/or Tobacco Products offered for Sale shall be clearly and conspicuously displayed to indicate the price of the product.
- J. Prohibition of Coupons and Discounts. No Tobacco Product Retailer shall:
- 1) Honor or redeem, or offer to honor or redeem, a coupon to allow a Consumer to purchase Cigarettes and/or Tobacco Products for less than the Full Retail Price;
 - 2) Sell any Cigarettes and/or Tobacco Products to a Consumer through a multiple Package discount or otherwise provide any such product to a Consumer for less than the Full Retail Price in consideration for the purchase of any Cigarettes and/or Tobacco Products or any other item; or
 - 3) Provide any free or discounted item to a Consumer in consideration for the purchase of Cigarettes and/or Tobacco Products.
- K. Positive Identification Required. No person engaged in Tobacco Product Retailing shall sell or transfer a Cigarette, Tobacco Products and/or Tobacco Paraphernalia Product to another person who appears to be under the age of thirty (30) years without first examining government issued photographic identification of the recipient to confirm that

the recipient is at least the minimum age under state law to purchase and possess Cigarettes, Tobacco Products or Tobacco Paraphernalia.

- L. False and Misleading Advertising Prohibited. Any Tobacco Product Retailer without a valid Tobacco Product Retailer License, including a retailer whose License has been suspended or revoked:
- 1) Shall not display Tobacco Products and/or Tobacco Paraphernalia in public view. The public display of Tobacco Products and/or Tobacco Paraphernalia is in violation of this provision shall constitute Tobacco Product Retailing without a License; and
 - 2) Shall not display any advertisement relating to Tobacco Products and/or Tobacco Paraphernalia that promotes the sale or distribution of such products from the location that could lead a reasonable consumer to believe that such products can be obtained from the location.

SECTION III. LIMITS ON LICENSE ELIGIBILITY.

- A. Mobile Vending. No Tobacco Product Retail License may be issued to authorize Tobacco Product Retailing at other than a fixed location. Mobile Vending of Cigarettes, Tobacco Products and Tobacco Paraphernalia is prohibited.
- B. Under-Age Applicant. An applicant not of Minimum Legal Sales Age to purchase or possess Tobacco Products and/or Tobacco Paraphernalia is ineligible to obtain a Tobacco Product Retailer License.

SECTION IV. LICENSE APPLICATION.

- A. Application for a Tobacco Product Retailer License shall be submitted in the name of each Applicant proposing to conduct Tobacco Product Retailing and shall be signed by the same or an authorized agent thereof.
- B. It is the responsibility of each Applicant to be informed regarding all laws applicable to Tobacco Product Retailing, including those laws affecting the issuance of a Tobacco Product Retailer License.
- C. No Applicant may rely on the issuance of a License as a determination by the County that the Applicant has complied with all laws applicable to Tobacco Product Retailing.
- D. A License issued contrary to this Ordinance, contrary to any other law, or on the basis of false or misleading information supplied by an Applicant shall be revoked.
- E. Nothing in this Ordinance shall be construed to vest in any person obtaining and maintaining a Tobacco Product Retailer License any status or right to act as a Tobacco Product Retailer in contravention of any provision of law.

F. All Tobacco Product Retailer License applications shall be submitted on a form supplied by the License Administrator and shall contain the following information:

- 1) The name, address, and telephone number of each Applicant seeking a License;
- 2) The business name, address, and telephone number of the single fixed location where a License is sought.
- 3) A name and mailing address authorized by each Applicant to receive all communications and notices (the “authorized address”) required by, authorized by, or convenient to the enforcement of this Ordinance. If an authorized address is not supplied, each Applicant shall be understood to consent to the provision of notice at the business address specified in subparagraph (2) above.

G. A Tobacco Product Retailer shall inform the County in writing of any change in the information submitted on the application for a Tobacco Product Retailer License within ten (10) business days of a change.

SECTION V. ISSUANCE OF A LICENSE.

A. Upon the receipt of a completed application for a Tobacco Product Retailer License and payment in full of all fees as required by this Ordinance, the License Administrator shall issue a License unless substantial evidence demonstrates that one or more of the following bases for denial exists:

- 1) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this Ordinance;
- 2) The application seeks authorization for Tobacco Product Retailer License for an Applicant for whom this Ordinance prohibits a License to be issued;
- 3) The Applicant seeks a License for a location that is not appropriately zoned for the use;
- 4) The Applicant seeks authorization for a License and the Applicant’s current License is suspended or revoked;
- 5) The Applicant and/or retail location is not in compliance with all state or federal laws;
- 6) The payment of licensing fee in the full amount chargeable for such License does not accompany the License application; or
- 7) The application seeks authorization for Tobacco Product Retailing that is prohibited pursuant to this Ordinance or that is unlawful pursuant to any other

law.

SECTION VI. AUTHORITY TO IMPOSE ADDITIONAL CONDITIONS ON LICENSE

- A. In addition to the standard terms and conditions set forth in this Section II, the License Administrator shall have the authority to impose such additional reasonable terms and conditions on a License as may be necessary to protect the public health, safety, and welfare, and to obtain compliance with the requirements to this Ordinance and other applicable law.
- B. For good cause shown, the License Administrator may administratively modify or eliminate or add any License condition during the term of the License.

SECTION VII. DENIAL OF LICENSE

If the Licensing Administrator denies the issuance of the License, the Licensing Administrator shall notify the Applicant in writing by regular mail postage prepaid to the authorized address as indicated on the applications. The notice shall include the grounds for denial. Notice is deemed to have been properly given upon mailing.

SECTION VIII. FEE FOR LICENSE.

- A. The annual License Fee for applications filed in 2019 after the effective date of Ordinance No. 19 shall be Six Hundred Dollars.
- B. The License Fee has been and shall be calculated so as to recover the direct and indirect costs of administration and enforcement of this Ordinance, including, for example, issuing a License, administering the Licensing program, retailer education and training, retailer inspection, compliance checks, community outreach and education, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this Ordinance.
- C. License Fees are nonrefundable except as may be required by law.

SECTION IX. LICENSE TERM, RENEWAL AND EXPIRATION.

- A. Term. The term of a License is one (1) year from the date of issuance.
- B. Renewal of License. Each Tobacco Product Retailer shall apply for the renewal of the Tobacco Product Retailer License and submit the applicable License fee no later than thirty days (30) prior to expiration of the term.
 - 1) At the time of filing of an application for the renewal of an existing License the applicant shall pay to the County a renewal fee in an amount of Two Hundred Dollars or as otherwise fixed by the Board of County Commissioners as part of its annual budget process.

- 2) The timely filing of a renewal application shall extend the current License until a final decision is made on the renewal application.
 - 3) The License Administrator may refuse to renew a License due to the failure of the renewal application to meet the terms and conditions of the existing License or this Ordinance.
- C. Invalid License. A Tobacco Product Retailer License is invalid if the appropriate fee has not been timely paid in full or if the term of the License has expired.
- D. Expiration of License. A Tobacco Product Retailer License that is not timely renewed shall expire at the end of its term. The failure to timely obtain a renewal of a License requires submission of a new application. There shall be no sale of any Tobacco Products after the License expiration date and before the new License is issued.

SECTION X. LICENSE NONTRANSFERABLE.

A License is non-transferable and non-assignable. Any attempt to transfer or assign a License shall void the License.

SECTION XI. LICENSE CONVEYS LIMITED, CONDITIONAL PRIVILEGE.

- A. Nothing in this Ordinance shall be construed to grant any person obtaining and maintaining a Tobacco Product Retailer License any status or right other than the limited conditional privilege subject to the requirements, conditions, limitations and qualifications of this Ordinance and all applicable laws, rules and regulations. The License does not confer a property right of any kind. The License and privilege created by the License may be further regulated, limited or completely extinguished at the discretion of the Board of County Commissioners without any compensation to the Licensee.
- B. The Board of County Commissioners may adopt and promulgate rules and regulations, in addition to those contained herein. Such rules and regulations, when promulgated, shall have the same force and effect as if incorporated in this Ordinance.

SECTION XII. COMPLIANCE MONITORING.

- A. Compliance with this Ordinance shall be monitored by the County. In addition, any peace officer may enforce the penal provisions of this Ordinance. The County may designate any number of additional persons to monitor compliance with this Ordinance.
- B. The County shall inspect each Tobacco Product Retailer periodically. All compliance checks shall comply with other applicable law. Nothing in this paragraph shall create a right of action in any Licensee or other person against the County or its agents.
- C. All Licensed locations with a compliance or inspection violation must be re-checked for compliance within forty-five (45) days of a violation.

SECTION XIII. SUSPENSION OR REVOCATION OF LICENSE.

A. The following shall be grounds for suspension or revocation of the Licensee's License:

- 1) A violation by a Licensee or Licensee's officers, agents, or employees of any of the provisions of this Ordinance, or any laws, rules or regulations of the United States, the State of Colorado or of the County.
- 2) Violations of any conditions imposed by the Licensing Administrator or a Hearing Officer in connection with the issuance or renewal of a License
- 3) Failure to pay State or local taxes that are related to the operation of the business associated with the License.
- 4) Loss of right to possession of the Licensed Premises.
- 5) Licensee's operations at its licensed location have ceased for more than six months for any reason.
- 6) Fraud, misrepresentation, or a false statement of material fact contained in the original or renewal license application;

B. The County Manager shall appoint a Hearing Officer to hear all actions relating to the suspension or revocation of Licenses pursuant to this Ordinance. The Hearing Officer shall have the authority to suspend, revoke, or impose remedial sanctions for violations.

C. The Licensing Administrator shall commence suspension or revocation proceedings by petitioning the Hearings Officer to issue an order to the Licensee to show cause why the Licensee's License(s) should not be suspended or revoked. The Hearing Officer shall issue such an order to show cause if the petition demonstrates that probable cause exists to determine that one or more grounds exist pursuant to subsection (A) above to suspend or revoke the Licensee's License. The order to show cause shall set the matter for a public hearing before the Hearing Officer.

D. Notice of the order to show cause order and hearing date shall be mailed to Licensee by regular mail, postage prepaid, at the address shown on the License no later than thirty (30) days prior to the hearing date. Notice is deemed to have been properly given upon mailing.

E. The standard of proof at such hearings shall be a preponderance of the evidence and the burden of proof shall be upon the Licensing Administrator.

F. In determining whether a License should be suspended or revoked, and in determining whether to impose conditions in the event of a suspension, the Hearing Officer shall consider the following factors:

- 1) The nature and circumstances of the violation;

- 2) Corrective action, if any taken by the Licensee;
- 3) Prior violations, if any by the Licensee;
- 4) The likelihood of recurrence of the violation;
- 5) Whether the violation was willful; and
- 6) Previous sanctions, if any, imposed on the Licensee.

SECTION XIV. DECISION IS FINAL

- A. Any decision by the License Administrator or Hearing Officer with respect to the processing of an application for the issuance of a License pursuant to this Ordinance shall be a final decision of the County and may be appealed to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The Applicant's or Licensee's (as applicable) failure to timely appeal the decision is a waiver of the applicant's or licensee's right to contest the denial or conditional approval of the application.

SECTION XV. ENFORCEMENT

- A. The remedies provided by this Ordinance are cumulative and in addition to any other remedies available at law or in equity. In addition to other remedies provided by this Ordinance or by other law, any violation of this Ordinance may be remedied by a civil action brought by the County Attorney, including but not limited to nuisance abatement proceedings and injunctive relief.
- B. Causing, permitting, aiding, abetting or concealing a violation of any provision of this Ordinance shall cause the offender to be subject to the penalties set forth herein.

SECTION XVI. SEVERABILITY

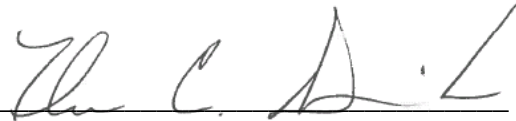
If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, paragraphs, sentences, clauses, or phrases hereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION XVII. EFFECTIVE DATE

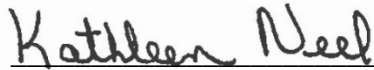
This Ordinance shall become effective on January 1, 2020 (the "Effective Date") and shall be enforceable on and after such Effective Date. Any person selling Tobacco Products without a License after the Effective Date will be in violation of this Ordinance.

INTRODUCED, READ, ORDERED PUBLISHED IN FULL AND SET FOR PUBLIC HEARING THIS 24th DAY OF SEPTEMBER, 2019.

**BOARD OF COUNTY COMMISSIONERS
OF SUMMIT COUNTY, COLORADO**

By: 
Thomas C. Davidson, Chairman

ATTEST:


Kathleen Neel, Clerk & Recorder

READ, PASSED AND ADOPTED AFTER PUBLIC HEARING AND PUBLICATION IN THE SUMMIT COUNTY JOURNAL ON _____, 2019 AND ORDERED PUBLISHED BY TITLE ONLY THIS _____ DAY OF OCTOBER, 2019.

**COUNTY OF SUMMIT
STATE OF COLORADO
By and Through its
BOARD OF COUNTY COMMISSIONERS**

By: _____
Thomas C. Davidson, Chairman

ATTEST:

Kathleen Neel, Clerk & Recorder