

**ORDINANCE 20-O-2 CONCERNING THE REGULATION OF SALES OF TOBACCO  
AND OTHER NICOTINE PRODUCTS TO PERSON UNDER 21 YEARS OF AGE**

**\*Motion by Hein/Hettinger:** To adopt Ordinance 20-O-2 stating that this Ordinance is for the regulation of sales of tobacco and nicotine products to persons under 21 years of age.

YEAS: 7

*Motion Passes.*

20-O- 2

AN ORDINANCE CONCERNING THE REGULATION OF  
SALES OF TOBACCO AND OTHER NICOTINE PRODUCTS TO  
PERSONS UNDER 21 YEARS OF AGE

WHEREAS, the Illinois General Assembly recently amended the Prevention of Tobacco Use by Persons Under 21 Years of Age and Sale and Distribution of Tobacco Products Act (720 ILCS 675/) to prohibit the distribution of alternate nicotine devices to persons under 21 years of age and to prohibit the possession of those devices by persons under 21 years of age,

WHEREAS, it is in the best interests of the health, safety, and welfare of the citizens of the County of Douglas to prohibit the sale to or possession of tobacco, tobacco products, and alternate nicotine devices to any person under the age of 21.

BE IT, AND, IT IS HEREBY RESOLVED BY THE DOUGLAS COUNTY BOARD IN OPEN MEETING THIS 19<sup>th</sup> DAY OF February 2020, THAT THIS ORDINANCE CONCERNING THE REGULATION OF SALES OF TOBACCO AND OTHER NICOTINE PRODUCTS TO PERSONS UNDER 21 YEARS OF AGE IS HEREBY ADOPTED AS FOLLOWS:

SECTION 1. Definitions.

In this Ordinance:

(a) "Adult-only facility" means a facility or restricted area (whether open-air or enclosed) where the operator ensures or has a reasonable basis to believe (such as by checking identification as required under State law, or by checking the identification of any person appearing to be under the age of 30) that no person under legal age is present. A facility or restricted area need not be permanently restricted to persons under 21 years of age to constitute an adult-only facility, provided that the operator ensures or has a reasonable basis to believe that no person under 21 years of age is present during the event or time period in question; and

(b) "Alternative nicotine product" means a product or device not consisting of or containing tobacco that provides for the ingestion into the body of nicotine, whether by chewing, smoking, absorbing, dissolving, inhaling, snorting, sniffing, or by any other means. "Alternative nicotine product" does not include: cigarettes as defined in Section 1 of the Cigarette Tax Act and tobacco products as defined in Section 10-5 of the Tobacco Products Tax Act of 1995; tobacco product and electronic cigarette as defined in this Section; or any product approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose; and

(c) "Electronic cigarette" means:

(1) any device that employs a battery or other

mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation;

(2) any cartridge or container of a solution or substance intended to be used with or in the device or to refill the device; or

(3) any solution or substance, whether or not it contains nicotine intended for use in the device.

(4) "Electronic cigarette" includes, but is not limited to, any electronic nicotine delivery system, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, vape pen, or similar product or device, and any components or parts that can be used to build the product or device. "Electronic cigarette" does not include: cigarettes as defined in Section 1 of the Cigarette Tax Act and tobacco products as defined in Section 10-5 of the Tobacco Products Tax Act of 1995; tobacco product and alternative nicotine product as defined in this Section; any product approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose; any asthma inhaler prescribed by a physician for that condition and is being marketed and sold solely for that approved purpose; or any therapeutic product approved for use under the Compassionate Use of Medical Cannabis Pilot Program Act; and

(d) "Nicotine" means any form of the chemical nicotine, including any salt or complex, regardless of whether the chemical is naturally or synthetically derived; and

(e) "Tobacco product" means any product containing or made from tobacco that is intended for human consumption, whether smoked, 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, snus, and any other smokeless tobacco product which contains tobacco that is finely cut, ground, powdered, or leaf and intended to be placed in the oral cavity. "Tobacco product" includes any component, part, or accessory of a tobacco product, whether or not sold separately. "Tobacco product" does not include: an electronic cigarette and alternative nicotine product as defined in this Section; or any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

(f) "Smoke" meant to light, emit, or exhale, the smoke of, a pipe, cigar, cigarette or any other tobacco product.

**SECTION 2.** Sale and Possession of Tobacco or Alternative Nicotine Products to Persons Under 21 Years of Age Prohibited.

(a) It is unlawful for any person to sell, offer for sale, give away or deliver tobacco products or tobacco accessories in any place that does not post signs informing the public of the age of sale restrictions and surgeon general warning in a conspicuous place at or near every display of tobacco products. Each sign shall be plainly visible and shall state:

"SALE OF TOBACCO ACCESSORIES AND SMOKING HERBS TO PERSON UNDER TWENTY-ONE YEARS OF AGE, OR THE MISREPRESENTATION OF AGE TO PROCURE SUCH A SALE IS PROHIBITED BY LAW."

SURGEON GENERAL'S WARNING: "SMOKING BY PREGNANT WOMEN MAY RESULT IN FETAL INJURY, PREMATURE BIRTH OR LOW BIRTH WEIGHT"; and

(b) No person under 21 years of age shall buy any tobacco product, electronic cigarette, or alternative nicotine product. No person shall sell, buy for, distribute samples of or furnish any tobacco product, electronic cigarette, or any alternative nicotine product to any person under 21 years of age; and

(1) No person under 16 years of age may sell any tobacco product, electronic cigarette, or alternative nicotine product at a retail establishment selling tobacco products, electronic cigarettes, or alternative nicotine products. This subsection does not apply to a sales clerk in a family-owned business which can prove that the sales clerk is in fact a son or daughter of the owner.

(2) Before selling, offering for sale, giving, or furnishing a tobacco product, electronic cigarette, or alternative nicotine product to another person, the person selling, offering for sale, giving, or furnishing the tobacco product, electronic cigarette, or alternative nicotine product shall verify that the person is at least 21 years of age by:

(A) examining from any person that appears to be under 30 years of age a government-issued photographic identification that establishes the person to be 21 years of age or older; or

(B) for sales of tobacco products, electronic cigarettes, or alternative nicotine products made through the Internet or other remote sales methods, performing an age verification through an independent, third party age verification service that compares information available from public records to the personal information entered by the person during the ordering process that establishes the person is 21 years of age or older.

(c) No person under 21 years of age in the furtherance or facilitation of obtaining any tobacco product, electronic cigarette, or alternative nicotine product shall display or use a false or forged identification card or transfer, alter, or deface an identification card; and

(d) A person shall not distribute without charge samples of any tobacco product to any other person, regardless of age, except for smokeless tobacco in an adult-only facility; and

This subsection (c) does not apply to the distribution of a tobacco product, electronic cigarette, or alternative nicotine product sample in any adult-only facility; and

(e) The sale or distribution by any person of a tobacco product as defined in this Section, including but not limited to a single or loose cigarette, that is not contained within a sealed container, pack, or package as provided by the manufacturer, which container, pack, or package bears the health warning required by federal law, is prohibited; and

(f) It is not a violation of this Act for a person under 21 years of age to purchase a tobacco product, electronic cigarette, or alternative nicotine product if the person under the age of 21 purchases or is given the tobacco product, electronic cigarette, or alternative nicotine product in any of its forms from a retail seller of tobacco products, electronic cigarettes, or alternative nicotine products or an employee of the retail seller pursuant to a plan or action to investigate, patrol, or otherwise conduct a "sting operation" or enforcement action against a retail seller of tobacco products, electronic cigarettes, or alternative nicotine products or a person employed by the retail seller of tobacco products, electronic cigarettes, or alternative nicotine products or on any premises authorized to sell tobacco products, electronic cigarettes, or alternative nicotine products to determine if tobacco products, electronic cigarettes, or alternative nicotine products are being sold or given to persons under 21 years of age if the "sting operation" or enforcement action

is approved by, conducted by, or conducted on behalf of the Department of State Police, the county sheriff, a municipal police department, the Department of Revenue, the Department of Public Health, or a local health department. The results of any sting operation or enforcement action, including the name of the clerk, shall be provided to the retail seller within 7 business days.

**SECTION 3. Enforcement; Complaints.**

(a) This Ordinance shall be enforced by the Douglas County Public Health Department; and

(b) Any person who desires to register a complaint pursuant to this Ordinance may initiate enforcement with the Department by calling 2-1-1 or such other method as the Department may establish; and

(c) The Department or its designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Ordinance; and

(d) An owner, manager, operator or employee of an establishment regulated by this Ordinance shall inform persons violating any provision of this Ordinance of the appropriate provisions thereof.

(e) In addition to the remedies provided by this Ordinance, the Department or any person aggrieved by the failure of the owner, operator, manager or other person in control of a public place or a place of employment

to comply with the provisions of this Ordinance may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

**SECTION 4.** Violations.

(a) A person, corporation, partnership, association or other entity who violates any provision of this chapter shall be fined pursuant to this section.

Each day that a violation occurs is a separate violation.

(b) A person who owns, operates, or otherwise controls a public place or place of employment that violates any provision of this chapter shall be fined (i) not less than \$200 for the first violation, (ii) not less than \$400 for the second violation within one year after the first violation, and a sixty (60) day suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(c) A report of a violation automatically triggers a letter to the establishment from the Douglas County Department of Public Health. The letter alerts them to the allegation, reminds them of the law on the books and the expectation of compliance, and reminds them of the penalties associated with non-compliance; and

(d) A third report of an alleged violation (within a 12-month period) triggers an inspection by the Health Department. Fines start at \$600 and continue at a rate of an additional \$200 per offense for repeat offenders (building or business owners/operators who allow the law to be violated on their premises.)

**SECTION 5.** Discrimination prohibited.

No individual may be discriminated against in any manner because of the exercise of any rights afforded by this chapter. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this chapter or reports or attempts to prosecute a violation of this chapter.

**SECTION 6.** Rules.

The Department of Public Health is authorized to adopt rules necessary for the administration of this Ordinance.

**SECTION 7.** Effective date.

This Ordinance shall be in full force and effect, after its passage and publication in pamphlet form, in accordance with law

**PASSED AND ADOPTED BY THE COUNTY BOARD OF DOUGLAS**

**COUNTY ON THIS 19<sup>th</sup> DAY OF February, 2020.**

AYES: 7 NAYS: 0

PRESENT: 7 ABSTAIN/ABSENT 0

Signed:

Don Munson  
Don Munson, Chairman Douglas County Board

ATTEST: Judi Pollock  
Judi Pollock, County Clerk and Recorder of Douglas County, Illinois