

**ORDINANCE**

**AN ORDINANCE AMENDING TITLE 5 (BUSINESS LICENSES AND REGULATIONS) OF THE MANITOU SPRINGS MUNICIPAL CODE BY THE ADDITION OF A NEW CHAPTER 5.89 ENTITLED “NON-CIGARETTE TOBACCO PRODUCT RETAILER LICENSING ORDINANCE” ESTABLISHING PROCEDURES FOR LICENSING AND REGULATING NON-CIGARETTE TOBACCO PRODUCTS.**

---

**WHEREAS**, the City of Manitou Springs recognizes the dangers associated with youth access to tobacco products;

**WHEREAS**, a local licensing system for tobacco retailers selling non-cigarette tobacco products is appropriate to protect the health, safety, and welfare of young people in Manitou Springs; and

**WHEREAS**, the requirement for a tobacco retailer license to sell non-cigarette tobacco products will not unduly burden legitimate business activities of retailers who sell non-cigarette tobacco products to adults.

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

**Section 1.** Chapter 5 of the Manitou Springs Municipal Code is amended to include a new Section 5.89 entitled “Non-cigarette Tobacco Product Licensing Ordinance” as follows:

**CHAPTER 5.89**

**NON-CIGARETTE TOBACCO PRODUCT LICENSING ORDINANCE**

**5.89.010. Short title.** This Chapter shall be known and may be cited as the “Non-cigarette Tobacco Product Licensing Ordinance.”

**5.89.020. Purpose.** Recognizing the harmful effects of tobacco products on persons under the age of eighteen (18) and that the sale of tobacco products to persons under the age of eighteen (18) is illegal pursuant to Section 121 of Chapter 13 of Title 18, C.R.S., it is the purpose of this Chapter to:

A. Require that sellers of non-cigarette tobacco products operate in a manner that does not condone the selling of non-cigarette tobacco products to persons under the age of eighteen (18) years of age;

B. Regulate sellers of non-cigarette tobacco products to reduce the likelihood of selling such products to persons under the age of eighteen (18) years of age; and

C. Establish a licensing system within the City of Manitou Springs for the sale of noncigarette tobacco products which encourages sellers of non-cigarette tobacco products to follow the law as it relates to the prohibition of selling non-cigarette tobacco products to persons under the age of eighteen (18) years.

#### **5.89.030. Definitions.**

A. As used in this Chapter, the following words shall have the following meanings, unless the context clearly requires otherwise:

1. *Cigarette* means any product that contains tobacco or nicotine, that is intended to be burned or heated under ordinary conditions of use, and consists of or contains: (1) any roll of tobacco or tobacco wrapped in paper or in any substance not containing tobacco; or (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. The term includes all “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.

2. *Department* means the City of Manitou Springs Police Department, and any agency or person designated by the City Administrator to enforce or administer the provisions of this Chapter.

3. *License* refers to the non-cigarette tobacco product retailer license.

4. *Licensee* means the owner or holder of a non-cigarette tobacco product retailer license.

5. *Non-cigarette tobacco product* includes: (1) any product, other than a cigarette, that contains tobacco or nicotine or is made or derived from tobacco that is intended or expected to be ingested, smoked, inhaled, placed in oral or nasal cavities, or applied to the skin of an individual; or (2) any electronic device that can be used to deliver nicotine or tobacco to the person using the device, including but not limited to an electronic cigarette, cigar, cigarillo or pipe. The term “non-cigarette tobacco product” does not include any product specifically approved by the United States Food and Drug Administration for use in reducing, treating or eliminating nicotine or tobacco dependence, or for other

medical purposes, when such product(s) is being marketed and sold solely for such an approved purpose.

6. *Non-cigarette tobacco product retail location* means any area of the premises where non-cigarette tobacco products are sold or distributed to a consumer including, but not limited to, the grounds occupied by a retailer and any store, stand, outlet, vehicle, cart, location, vending machine or structure where non-cigarette tobacco products are sold.

7. *Non-cigarette tobacco product retailer* means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, a non-cigarette tobacco product.

8. *Non-cigarette tobacco product retailing* means the selling, offering for sale, or exchanging for any form of consideration a non-cigarette tobacco product.

9. *Self-service display* means the open display or storage of non-cigarette tobacco products in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and without a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

10. *Vending machine* shall mean any mechanical, electrical, or electronic selfservice device which, upon insertion of money, tokens, or any other form of payment, dispenses product.

#### **5.89.040. Requirements and prohibitions.**

A. Non-cigarette tobacco product retailer license required.

1. It shall be unlawful for any person to act as a non-cigarette tobacco product retailer in the City of Manitou Springs without first obtaining and maintaining a valid non-cigarette tobacco product retailer license pursuant to this Chapter for each location where non-cigarette tobacco product retailing occurs.

2. No license may be issued to authorize non-cigarette tobacco product retailing anywhere other than at a fixed location. Non-cigarette tobacco product retailing by persons on foot or from vehicles is prohibited.

3. Non-cigarette tobacco product retailing without a valid non-cigarette tobacco product retailer license is a nuisance as a matter of law.

B. Lawful Business Operation. In the course of non-cigarette 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 Chapter for a licensee, or any of the licensee's agents or employees, to violate any local, state, or federal law applicable to the sale of non-cigarette tobacco products.

C. Display of License. Each non-cigarette tobacco product retailer license shall be prominently displayed in a publicly visible location at the licensed non-cigarette tobacco product retail location.

D. Other Prohibitions.

1. A non-cigarette tobacco product retail location may only have one active license at one time.

2. In the event a license is revoked for a particular non-cigarette tobacco product retail location, no new license shall issue for such location for a period of one (1) year following the revocation.

3. No license shall be issued to any person under eighteen (18) years of age.

#### **5.89.050. Conditions of the non-cigarette tobacco product retailer license.**

The following conditions shall apply to the licensee:

1. Self-service displays prohibited. Non-cigarette tobacco product retailing by means of a self-service display is prohibited.

2. Requirements of positive identification. No person engaged in non-cigarette tobacco product retailing shall sell or transfer a non-cigarette tobacco product to another person who appears to be under the age of thirty (30) years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and possess the non-cigarette tobacco product.

#### **5.89.060. Application procedure.**

A. An application for a license shall be submitted and signed in the name of each proprietor or an authorized agent thereof. It is the responsibility of each proprietor to be informed regarding all laws applicable to tobacco retailing, including those laws affecting the issuance of said license. No proprietor may rely on the issuance of a license as a determination by the City that the proprietor has complied with all applicable tobacco retailing laws.

B. All applications shall be submitted on a form supplied by the City.

C. A licensed non-cigarette tobacco product retailer shall inform the City in writing of any change in the information submitted on an application for a license within thirty (30) business days of a change.

**5.89.070. Issuance of a non-cigarette tobacco product license.**

Upon the receipt of a completed application for a non-cigarette tobacco product retailer license as required by this Chapter, the City 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 incomplete, inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this Chapter;
2. The applicant seeks authorization for a license and the applicant's current license is suspended or revoked; or
3. The applicant is under eighteen (18) years of age.

**5.89.080. License term; renewal; expiration.**

A. Term of license. The term of a non-cigarette tobacco product retail license is one (1) year. A license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired.

B. Renewal of license. Each licensee shall apply for the renewal of the license and submit the license fee no later than thirty (30) days prior to expiration of the one-year term.

C. Expiration of license. A license that is not timely renewed shall expire at the end of its term. To renew a license not timely renewed pursuant to subparagraph (A), the proprietor must submit a new application form and license fee and shall not sell any non-cigarette tobacco products after the license expiration date and before the new license is issued.

**5.89.090. Non-transferable.**

A. A license may not be transferred from one person to another or from one location to another. A new license is required whenever a non-cigarette tobacco product retailing location has a change in proprietor(s).

B. When a license has been issued to a husband and wife, or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new license for the remainder of the term of that license. All rights and privileges granted under the original license shall continue in full force and effect as to such survivors for the balance of term of the license.

#### **5.89.100. Fee for license.**

The fee to issue or to renew a license shall be established from time to time by resolution of the City Council. The fee shall be calculated so as to recover the cost of administration and enforcement of this Chapter. Fees are nonrefundable except as may be required by law.

#### **5.89.110. Compliance monitoring.**

A. Compliance with this Chapter shall be monitored by the Department. Any peace officer may enforce this Chapter.

B. The Department shall not enforce any law establishing a minimum age for tobacco product purchases or possession against a person who otherwise might be in violation of such law because of the person's age (hereinafter "youth decoy") if the potential violation occurs when:

1. The youth decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the Department

2. The youth decoy is acting as an agent of a person designated by the City to monitor compliance with this Chapter; or

3. The youth decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the El Paso County Department of Health and Environment or the Colorado Department of Health and Environment.

C. A licensee shall comply with the Department when compliance checks are being conducted. A licensee's failure to comply with the reasonable lawful requests and demands of the Department during the course of a compliance check shall be considered to be a violation of the license, and the licensee shall be penalized according to Section 5.89.110(A).

#### **5.89.120. Penalties and fines.**

A. Licensees: penalties and fines. In addition to any other penalty authorized by law, a licensee shall be penalized according to this paragraph if the municipal court determines, based on a preponderance of the evidence, after the licensee is afforded notice and an opportunity to be heard, that the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of this Chapter, or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law relating to the sale of tobacco to minors including but not limited to C.R.S. §§ 18-13-121 and 24-35-503. Each such violation shall be subject to the following penalties:

1. One violation within one year: a fine not to exceed one hundred (\$100.00) dollars.

2. Two violations within one year: a fine not to exceed two hundred (\$200.00) dollars and a mandatory suspension of license for up to seven (7) days.

3. Three violations within one year: a fine not to exceed three hundred (\$300.00) dollars and a minimum ten (10) day and maximum thirty (30) day suspension of license.

4. Four violations within one year: a fine not to exceed four hundred ninety-nine dollars (\$499.00) and revocation of license. A licensee whose license has been revoked shall not be issued a new license until a period of one year has passed from the date the revocation occurred. The revocation of a licensee's license at one location shall not affect the status of other licenses the licensee holds at separate locations.

5. Licensees are prohibited from selling non-cigarette tobacco products when the license has been suspended or revoked at the location subject to the suspension or revocation.

B. Sales of non-cigarette tobacco products with a suspended license, revoked license, or without a license: penalties and fines. Any non-cigarette tobacco product retailer found to have sold a non-cigarette tobacco product without a license as mandated under this Chapter, or with a suspended or revoked license, shall be fined up to four hundred ninety-nine dollars (\$499.00) for each separate non-cigarette tobacco product sold during the period of non-compliance with this Chapter.

C. Any other violation of the provisions of this Chapter shall subject the offender to a fine of up to one hundred dollars (\$100.00).

#### **5.89.130. Enforcement.**

A. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

B. Violations of this Chapter are subject to a civil action in municipal court punishable by a civil fine, license suspension or revocation, or both pursuant to Section 5.89.110.

C. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall cause the offender to be subject to a fine not to exceed one hundred dollars (\$100.00).

D. Violations of this Chapter are hereby declared to be public nuisances.

#### **5.89.140. Compliance with C.R.S. § 39-22-623.**

This Chapter does not nor shall not be construed in any way as imposing a fee, license or tax as a condition for engaging in the business of selling cigarettes or imposing a tax on cigarettes. The non-cigarette tobacco product retailer license does not apply to the sale of cigarettes. If any part of this Chapter is found to impose a fee, license, or tax as a condition for engaging in the business of selling cigarettes, then that part shall be deemed void.

**5.89.150. Effective date.**

The effective date of this Chapter shall be January 1, 2012.

**Section 2:** If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

**Section 3:** The repeal or modification of any provision of Manitou Springs Municipal Code by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

**Section 4:** This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

**Section 5:** This ordinance shall take effect five (5) days after publication following final passage.

Passed on First Reading and Ordered Published this 1<sup>st</sup> day of November, 2011.

/s/ Donna Kast  
City Clerk

A Public Hearing on this ordinance will be held at the November 15, 2011 City Council meeting. The Council Meeting will be held at 7:00 P.M. at City Hall, 606 Manitou Avenue, Manitou Springs, Colorado.

Ordinance Published: November 3, 2011 (in full).  
*City's Official Website and at City Hall*

Passed on Second Reading and Ordered Published this 15th day of November 2011.



Approved: /s/ Marc A. Snyder  
Mayor and City Council

Attest: /s/ Donna Kast  
City Clerk

Approved for Council Action: /s/ Jack Benson  
City Administrator

Approved as to form: /s/ Jeff Parker  
City Attorney

Published: November 17, 2011(in full)  
*City's Official Website and at City Hall*