

**ORDINANCE**

**AN ORDINANCE AMENDING TITLE 5 (BUSINESS LICENSES AND REGULATIONS) OF THE MANITOU SPRINGS MUNICIPAL CODE BY THE ADDITION OF A NEW CHAPTER 5.90 ENTITLED “YOUTH ACCESS TO TOBACCO PRODUCTS ORDINANCE” ESTABLISHING PROCEDURES FOR PREVENTING YOUTH ACCESS TO TOBACCO PRODUCTS IN RETAIL ENVIRONMENTS.**

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

**WHEREAS**, research shows that most adult smokers began using tobacco products before reaching the legal age at which they could purchase tobacco products;

**WHEREAS**, regulating the sale of tobacco products is appropriate to protect the health, safety, and welfare of young people in Manitou Springs; and

**WHEREAS**, the requirement that retail sellers of tobacco products comply with the foregoing regulations will not unduly burden legitimate business activities of retailers who sell tobacco products to adults.

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

**Section 1:** Title 5 of the Manitou Springs Municipal Code is hereby amended by the addition of a new Chapter 5.90 entitled “Restrictions on Youth Access to Tobacco Products” to read as follows:

**CHAPTER 5.90 – RESTRICTIONS ON YOUTH ACCESS TO TOBACCO PRODUCTS**

**5.90.010. Short title.** This Chapter shall be known and may be cited as the “Youth Access to Tobacco Products Ordinance.”

**5.90.020. 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:

1. Require sellers of tobacco products to operate in a manner that does not condone the selling of tobacco products to persons forbidden by law from purchasing such products;

2. Regulate sellers of tobacco products to reduce the likelihood of selling such products to persons under the legal age for purchasing tobacco; and

3. Regulate sellers of tobacco products to reduce the likelihood that such sellers' employees under the legal age to purchase tobacco products are restricted from accessing all tobacco products.

**5.90.030. Definitions.**

A. As used in this Chapter, the following words shall have the following meanings:

1. *Retail tobacco business* means a sole proprietorship, corporation, limited liability company, partnership, or other enterprise engaged primarily in the sale, manufacture, or promotion of tobacco, tobacco products, or smoking devices or accessories, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is less than five percent (5%) gross sales receipts. For purposes of enforcement of this chapter, retail tobacco business includes, but is not limited to, a sole proprietorship, corporation, limited liability company or other enterprise engaged primarily in the sale or manufacture of hookah or shisha products and related smoking products, including but not limited to, any plant or other organic matter packaged for smoking or held out as a smoking product, or any sole proprietorship, corporation, limited liability company, partnership, or other enterprise engaged in the promotion of hookah or shisha smoking, sometimes referred to as a hookah bar, café, or lounge.

2. *Tobacco product* includes (1) any product 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, 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 "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.

3. *Self-service display* means the open display or storage of 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 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.

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

**5.90.040 Minimum age for persons selling and handling tobacco products.**

No person in the course of employment who is younger than the minimum age established by the laws of Colorado for the purchase of tobacco products shall sell, stock, retrieve, or otherwise handle tobacco products.

**5.90.050. Positive identification required.**

No person shall sell or transfer a 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 the laws of Colorado to purchase and possess tobacco products.

**5.90.060. No minors permitted in a retail tobacco business.**

No person who is younger than the minimum age established by the laws of Colorado for the purchase of tobacco products shall be admitted to or be on the premises of a Retail Tobacco Business unless accompanied by his or her parent or guardian.

**5.90.070. Prohibition of self-service displays.**

Retailers shall stock and display all tobacco products in a manner so as to make all such products inaccessible to customers without the assistance of a retail clerk, thereby requiring a direct face-to-face exchange of the tobacco product from an employee of the business to the customer.

**5.90.080. Penalty for violations.**

A. Any retail establishment or adult found to be in violation of any provision of this Chapter shall be subject to a fine of up to \$300.

B. Any minor found to be in violation of any provision of this Chapter shall be subject to a fine of up to \$100. Within the discretion of the court, this fine may be made payable at a rate of \$5 an hour for services provided to the City of Manitou Springs by the offending minor.

**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*