

## ORDINANCE 423

### AN ORDINANCE TO REGULATE YOUTH ACCESS TO TOBACCO AND VAPOR PRODUCTS WITHIN THE BOUNDARIES OF THE CITY OF STILWELL, OKLAHOMA

**WHEREAS**, 21.1 percent of adults in Oklahoma smoke; and

**WHEREAS**, tobacco use is the leading preventable cause of death, killing more than 7,500 Oklahomans every year; and

**WHEREAS**, tobacco use can cause disease in nearly all organ systems, and is responsible for 87 percent of lung cancer deaths, 79 percent of all chronic obstructive pulmonary disease deaths, and 32 percent of coronary heart disease deaths; and

**WHEREAS**, research has found that aerosol from vapor products contains chemicals known to cause cancer, birth defects, or other reproductive harm and vapor products may involuntarily expose children, youth, pregnant women, and other bystanders to aerosolized nicotine; and

**WHEREAS**, smokeless tobacco use increases people's risk of heart disease, stroke, and cancer, specifically oral, esophageal, and pancreatic cancers, as well as stillbirth and pre-term delivery; and

**WHEREAS**, community policies that fail to prohibit the use of tobacco products normalize tobacco use and make it more likely that people will use tobacco products because they see others using tobacco;

**WHEREAS**, tobacco use and exposure imposes an enormous economic burden upon the government, taxpayers, business owners, and individuals through health care costs and lost productivity, as evidenced by the \$1.62 billion Oklahoma spends on smoking-related medical care and \$2.1 billion in lost productivity; and

**WHEREAS**, laws restricting the use of tobacco products have demonstrated a high return on investment; and

**WHEREAS**, Oklahoma state law does not preempt local governments from regulating the use of smokeless tobacco products and vapor products.

**WHEREAS**, in order to fulfill the needs of the community, policies and regulations are necessary to provide a framework for care and safety of the citizens of the City of Stilwell:

It is therefore the intent of the City Council of the City of Stilwell, in enacting this ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of tobacco product and vapor product use and by affirming and promoting a healthy environment in the City of Stilwell.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE  
CITY OF STILWELL, OKLAHOMA:**

**SECTION 1**

**DEFINITIONS**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. **Nicotine product:** means any product that contains nicotine extracted or isolated from plants, vegetables, fruit, herbs, weeds, genetically modified organic matter, or that is synthetic in origin and is intended for human consumption; provided, however, this term shall not include products approved by the United States Food and Drug Administration for smoking cessation;
2. **Person:** means any individual, firm, fiduciary, partnership, corporation, trust, or association, however formed;
3. **Proof of age:** means a driver license, license for identification only, or other generally accepted means of identification that describes the individual as twenty-one (21) years of age or older and contains a photograph or other likeness of the individual and appears on its face to be valid;
4. **Sample:** means a tobacco product, nicotine product or vapor product distributed to members of the public at no cost for the purpose of promoting the product;
5. **Sampling:** means the distribution of samples to members of the public in a public place;
6. **Tobacco product:** means any product that contains tobacco and is intended for human consumption;
7. **Transaction scan:** means the process by which a seller checks, by means of a transaction scan device, the validity of a driver license or other government- issued photo identification;
8. **Transaction scan device:** means any commercial device or combination of devices used at a point of sale or entry that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver license or other government-issued photo identification; and
9. **Vapor product:** means noncombustible products, that may or may not contain nicotine, that employ a mechanical heating element, battery, electronic circuit, or other mechanism, regardless of shape or size, that can be used to produce a vapor in a solution or other form. "Vapor products" shall include any vapor cartridge or other container with or without nicotine or other form that is intended to be used with an electronic cigarette, electronic cigar, electronic cigarillo,

electronic pipe, or similar product or device and any vapor cartridge or other container of a solution, that may or may not contain nicotine, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo or electronic device. "Vapor products" do not include any products regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

## **SECTION 2**

### **UNLAWFUL TO SELL OR FURNISH TOBACCO, NICOTINE OR VAPOR PRODUCT TO PERSONS UNDER TWENTY-ONE YEARS OF AGE**

1. It is unlawful for any person to sell, give or furnish in any manner any tobacco product, nicotine product or vapor product to another person who is under twenty-one (21) years of age, or to purchase in any manner a tobacco product, nicotine product or vapor product on behalf of any such person. It shall not be unlawful for an employee under twenty-one (21) years of age to handle tobacco products, nicotine products or vapor products when required in performance of the employee's duties.
2. A person engaged in the sale or distribution of tobacco products, nicotine products or vapor products shall demand proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser may be less than twenty-one (21) years of age.
3. If an individual engaged in the sale or distribution of tobacco products, nicotine products or vapor products has demanded proof of age from a prospective purchaser or recipient who is not under twenty-one (21) years of age, the failure to subsequently require proof of age shall not constitute a violation of this subsection.
  - a. Any violation of subsection 1 or 2 of this section is an offense against the City of Stilwell; upon conviction of any such offense, the violator shall be punished as follows:
    - i. Not more than One Hundred Dollars (\$100.00) for the first offense;
    - ii. Not more than Two Hundred Dollars (\$200.00) for the second offense within a two-year period following the first offense;
    - iii. Not more than Three Hundred Dollars (\$300.00) for the third offense within a two-year period following the first offense. In addition to any other penalty, the store's license to sell tobacco

products or nicotine products or the store's sales tax permit for a store that is predominantly engaged in the sale of vapor products in which the sale of other products is merely incidental may be suspended for a period not exceeding thirty (30) days, or

- iv. Not more than Three Hundred Dollars (\$300.00) for a fourth or subsequent offense within a two-year period following the first offense. In addition to any other penalty, the store's license to sell tobacco products or nicotine products or the store's sales tax permit for a store that is predominantly engaged in the sale of vapor products in which the sale of other products is merely incidental may be suspended for a period not exceeding sixty (60) days.
- b. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age shall be a defense to any action brought pursuant to this section. A person cited for violating this section shall be deemed to have reasonably relied upon proof of age, and such person shall not be found guilty of the violation if such person proves that:
- i. the individual who purchased or received the tobacco product, nicotine product or vapor product presented a driver license or other government- issued photo identification purporting to establish that such individual was twenty-one (21) years of age or older, or
  - ii. the person cited for the violation confirmed the validity of the driver license or other government-issued photo identification presented by such individual by performing a transaction scan by means of a transaction scan device.

Provided, that this defense shall not relieve from liability any person cited for a violation of this section if the person failed to exercise reasonable diligence to determine whether the physical description and picture appearing on the driver license or other government-issued photo identification was that of the individual who presented it. The availability of the defense described in this subsection does not affect the availability of any other defense under any other provision of law.

### **SECTION 3**

#### **DISTRIBUTION OF TOBACCO PRODUCT AND VAPOR PRODUCT SAMPLES**

1. It shall be unlawful for any person or retailer to distribute tobacco products, nicotine products, vapor products or product samples to any person under twenty-one (21) years of age.
2. No person shall distribute tobacco products, nicotine products, vapor products or product samples in or on any public street, sidewalk, or park that is within three hundred (300) feet of any playground, school, or other facility when the facility is being used primarily by persons under twenty-one (21) years of age.
3. When a person is convicted or enters a plea and receives a continued sentence for a violation of subsections A or B of this section, the total of any fines, fees, or costs shall not exceed the following:
  - a. Not more than One Hundred Dollars (\$100.00) for the first offense;
  - b. Not more than Two Hundred Dollars (\$200.00) for the second offense; and
  - c. Not more than Three Hundred Dollars (\$300.00) for a third or subsequent offense.

#### **SECTION 4**

##### **PUBLIC ACCESS TO DISPLAYED TOBACCO, NICOTINE OR VAPOR PRODUCTS**

1. It is unlawful for any person or retail store to display or offer for sale tobacco products, nicotine products, or vapor products in any manner that allows public access to the tobacco products, nicotine products or vapor products without assistance from the person displaying the tobacco products, nicotine products or vapor products or an employee or the owner of the store. The provisions of this subsection shall not apply to retail stores which do not admit into the store persons under twenty-one (21) years of age.
2. When a person is convicted or enters a plea and receives a continued sentence for a violation of this section, the total of any fines, fees, or costs shall not exceed Two Hundred Dollars (\$200.00) for each offense.

#### **SECTION 5**

##### **ENFORCEMENT**

1. Any conviction for a violation of this Article and any compliance checks by a municipal police officer pursuant to subsection C of this section shall be

reported in writing to the Alcoholic Beverage Laws Enforcement (ABLE) Commission within thirty (30) days of such conviction or compliance check. Such reports shall be compiled in the manner prescribed by the ABLE Commission. Convictions shall be reported by the [Court Administrator/Court Clerk] or his designee and compliance checks shall be reported by the Chief of Police or his designee.

2. For the purpose of determining second or subsequent violations, both the offenses penalized by the ABLE Commission as administrative fines and the offenses penalized by the municipality and reported to the ABLE Commission, shall be considered together in such determination.
3. Persons under twenty-one (21) years of age may be enlisted by the Police Department to assist in compliance checks and enforcement of this Article pursuant to the rules of the ABLE Commission.

## **SECTION 6**

### **REPEAL & SEVERABILITY**

1. Any and all existing ordinances or portions thereof in conflict herewith be and the same are hereby repealed.
2. The provisions of this ordinance shall be severable and, if any of the provisions shall be held in contravention of the Constitution and laws of the State of Oklahoma, the decisions of the court shall not affect the validity of the remaining portions.
3. It is the intent of this ordinance that the same would have been adopted had such unconstitutional or unlawful provisions, if any, not been included herein.

PASSED by the City Council this 6<sup>th</sup> day of September, 2022.

APPROVED by the Mayor this 6<sup>th</sup> day of September, 2022.

ATTEST:

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Jean Ann Wright, Mayor

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Larry A. Nettles, City Clerk-Treasurer