

ORDINANCE NO. C-19-21

AN ORDINANCE OF THE CITY OF FORT LAUDERDALE, FLORIDA, AMENDING CHAPTER 16, ENTITLED "MISCELLANEOUS PROVISIONS AND OFFENSES," OF THE CODE OF ORDINANCES OF THE CITY OF FORT LAUDERDALE, FLORIDA, BY CREATING ARTICLE VIII, TO BE ENTITLED "PROHIBITION OF SALE OR DISTRIBUTION OF TOBACCO PRODUCTS TO PERSONS UNDER 21 YEARS OF AGE," TO PROHIBIT THE SALE AND DISTRIBUTION OF TOBACCO PRODUCTS TO PERSONS UNDER 21 YEARS OF AGE, PROVIDING FOR PENALTIES, PROVIDING FOR CONFLICT, PROVIDING FOR SEVERABILITY, PROVIDING FOR CODIFICATION, AND PROVIDING FOR AN EFFECTIVE DATE.

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WHEREAS, the City of Fort Lauderdale recognizes that the use of tobacco products has devastating health and economic consequences; and

WHEREAS, commercial tobacco use is the foremost preventable cause of premature death in America. It causes nearly half a million deaths annually and has been responsible for 20.8 million premature deaths in the United States since the first Surgeon General's report on smoking in 1964; and

WHEREAS, tobacco product use leads to more than \$300 billion in health care and lost worker productivity costs each year; and

WHEREAS, young brains are particularly susceptible to the addictive properties of nicotine; which results in approximately 3 out of 4 teen smokers end up smoking into adulthood; and

WHEREAS, an estimated 5.6 million youth aged 0 to 17 are projected to die prematurely from commercial tobacco-related illness if prevalence rates do not change; and

WHEREAS, national data show that 95 percent of adults who smoke, began smoking before they turned 21. The timeframe between the ages of 18 to 21 are a critical period when many adults who smoke move from experimental smoking to regular, daily use; and

WHEREAS, data from the National Youth Tobacco Survey demonstrates that youth use of e-cigarettes continues to increase. The overall use rate of e-cigarettes among youth continues to be higher than other forms of tobacco and has stymied previous progress in the reduction of the overall tobacco use rate for youth. Furthermore, the popularity among youth of newer products, is likely responsible for the significant increase of e-cigarette usage among high school students; and

WHEREAS, in 2015, the Institute of Medicine (now the National Academy of Medicine) concluded that raising the minimum legal sales age for tobacco products nationwide would reduce tobacco initiation, particularly among adolescents aged 15 to 17, improve health across the lifespan, and save lives; and that raising the minimum legal sales age for tobacco products nationwide to 21 would, over time, lead to a 12 percent decrease in smoking prevalence; and

WHEREAS, the Institute of Medicine also predicted that raising the minimum legal sales age for tobacco products nationwide to 21 would result in 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost for those born between 2000 and 2019, and would result in near immediate reductions in preterm birth, low birth weight, and sudden infant death syndrome; and

WHEREAS, 14 states and at least 475 cities and counties have enacted minimum legal sales age 21 policies to further restrict access to commercial tobacco; and

WHEREAS, raising the minimum legal sales age of tobacco products is consistent with raising the legal drinking age to 21, which led to reduced alcohol use and dependence among youth, and contributed to the decline in drunk driving fatalities; and

WHEREAS, raising the age for tobacco sales in the City of Fort Lauderdale, Florida would lessen the accessibility of tobacco to minors and further the City's interest in furthering the health, safety, and general welfare of the residents of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. That the foregoing "Whereas" clauses are ratified and incorporated as the legislative intent of this Ordinance.

SECTION 2. That Chapter 16 entitled “Miscellaneous Provisions and Offenses,” of the Code of Ordinances of the City of Fort Lauderdale, Florida is amended by creating Article VIII, entitled “Prohibition of Sale or Distribution of Tobacco Products to Persons Under 21 Years of Age,” to provide as follows:

**ARTICLE VIII. – PROHIBITION OF SALE OR DISTRIBUTION OF TOBACCO PRODUCTS TO PERSONS UNDER 21 YEARS OF AGE**

**Section 16-144. - Purpose; Applicability.**

The purpose of this article is to reduce tobacco use by regulating the distribution of tobacco products and to keep tobacco products out of the hands of persons under 21 years of age.

**Section 16-145. - Definitions.**

For the purpose of this Article, the following terms, phrases, words, abbreviations and their derivations shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

Alternative Nicotine Product is 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. This does not include tobacco products as that term is defined in this Section or any product approved by the United States Food and Drug Administration as a nontobacco product for sale as a tobacco cessation product, or as a tobacco dependence product, or for other medicinal purposes.

Distribute or Distribution means to furnish, give, provide, or to attempt to do so, whether gratuitously or for any type of compensation.

Distributor means a person who distributes a tobacco product.

Electronic Cigarette is a battery-powered device which simulates tobacco or other smoking. It uses a heating device or other mechanism that vaporizes a liquid solution. An Electronic Cigarette includes devices known as personal vaporizer or electronic nicotine delivery system. Electronic cigarette does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration as a tobacco cessation product, or as a tobacco dependence product, or for other medicinal purposes.

*Electronic Cigarette Product* is a product designed or intended for use with an electronic cigarette, such as atomizers, cartomizers, batteries, bottles, or vaporizing liquid (e-juice).

*Liquid nicotine* means any liquid product composed either in whole or part of pure nicotine and other substances and manufactured for use with e-cigarettes.

*Open display unit*, in the context of the retail sale of e-cigarettes and liquid nicotine, means any device, furniture or furnishing within or upon which e-cigarettes or liquid nicotine are displayed to customers, and includes but is not limited to any case, rack, shelf, counter, table, desk, kiosk, booth, stand and other surface.

*Person* means any natural person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation, or any officer, agent, employee, factor, or any other personal representative thereof in any capacity.

*Self-service merchandising*, in the context of the retail sale of e-cigarettes and liquid nicotine, means the open display of e-cigarettes and liquid nicotine, whether packaged or otherwise, for direct retail customer access and handling prior to purchase without the intervention or assistance of the retailer or the retailer's owner, employee or agent. Such open display includes the use of an open display unit.

*Smoking* means smoking as defined in Section 386.203, Florida Statutes, and any successor thereto.

*Tobacco product* means any product containing, made, or derived from tobacco or nicotine, whether natural or synthetic, that is intended for human consumption, or is likely to be consumed, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product, including but not limited to cigarettes: e-liquids; cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour: Cavendish; plug and twist tobacco: fine cut and other chewing tobaccos: shorts; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco product also means electronic delivery systems, including any device that can be used to deliver aerosolized or vaporized nicotine or any other substance to the person inhaling from the device including, but not limited to, e-cigarettes, e-cigars, e-pipes, vapor products, or hookahs. Tobacco product also means any component or accessory used in the consumption of tobacco products, whether or not they contain nicotine. including, but not limited to, filters, cartridges, pods, pens, rolling papers, or pipes. Tobacco product does not include any product that has been approved by the

United States Food and Drug Administration for sale as a tobacco-cessation product or as a tobacco-dependence product intended to assist tobacco users in quitting or reducing tobacco use, or for other medical purposes, and is being marketed and sold solely for such purpose.

Use of an e-cigarette means the heating or ignition of an e-cigarette which creates a vapor of liquid nicotine and/or other substances which the user can inhale in simulation of smoking.

#### **Section 16-146. - Prohibitions.**

It shall be unlawful for any person to sell, offer for sale, give away, or deliver any tobacco product, to any person under the age of twenty-one (21) years. If any person suspects that a minor is attempting to purchase or obtain any tobacco product, such person shall request and examine identification from the purchaser or acquirer and positively establish the purchaser's or acquirer's age as twenty-one (21) years or greater before allowing the purchase or delivery of such products to occur.

#### **Section 16-147. - Age Verification.**

Before distributing any tobacco product, or products regulated by this Article the distributor shall verify that the recipient is at least 21 years of age. Distributors must verify the legal sales age by examining the recipient's government-issued identification. Verification is not required for a person over the age of 30. That a recipient appeared to be 30 years of age or older shall not constitute a defense to a violation of this section.

#### **Section 16-148. - Signage.**

No person may sell or permit the sale of tobacco products in the City of Fort Lauderdale unless a clearly visible notice is posted at the location where tobacco products are available for purchase, which shall state and be legibly printed in letters at least one half inch high that "The sale of tobacco products to persons under the age of 21 is against City of Fort Lauderdale law. Proof of age is required for purchase."

**Section 16-149. Self-Service Merchandise Prohibited.**

No person, business, tobacco retailer or other establishment subject to this article shall sell, permit to be sold, offer for sale or display for sale any tobacco products by means of self-service merchandising or any other means other than vendor-assisted sales, unless access to the premises by persons under the age of 21 is prohibited.

**Section 16-150. - Enforcement: Penalties.**

- (1) Commencing six (6) months after the adoption of this Ordinance, the City shall enforce violations of this Article.
- (2) Any violation of this article, shall be subject to enforcement in accordance with Chapter 11 of the Code of Ordinances of the City of Fort Lauderdale; or Chapter 1, Section 1-6 of the Code of Ordinances of the City of Fort Lauderdale.
- (3) Notwithstanding anything to the contrary, the penalties for a violation of the provisions of this article, which are brought pursuant to Chapter 11 of the Code of Ordinances of the City of Fort Lauderdale, shall be as follows:
  - (a) First offense: a written warning notice, with no civil penalty as a first response to a violation. A copy shall be kept on file with the City.
  - (b) Second offense: a \$500.00 civil citation will be issued.
  - (c) All subsequent offenses: a \$1,000.00 civil citation will be issued.

Each day that a prohibited sale or other distribution occurs shall constitute a separate violation.

- (4) Nothing stated herein shall be construed as a limitation to the City's remedies available to it through its contract, lease, permit, or other relationship with a Distributor.

**Section 16-151 – 16-153. - Reserved.**

SECTION 3. Should any section or provision of this ordinance, or any portion, paragraph, sentence or word thereof be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof.

SECTION 4. That this Ordinance shall be in full force and effect immediately upon its passage and adoption.

PASSED FIRST READING this the 20<sup>th</sup> day of August, 2019.

PASSED SECOND READING this the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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Mayor  
DEAN J. TRANTALIS

ATTEST:

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City Clerk  
JEFFREY A. MODARELLI