

SPONSORED BY: MAYOR LEIGHTY

COUNCILMAN'S BILL

ORDINANCE NO.

No. CB-1957
Series of 2020

1803
Series of 2020

A BILL FOR AN ORDINANCE AMENDING CHAPTER 18 OF THE NORTHGLENN MUNICIPAL CODE ADOPTING A NEW ARTICLE 19 REGARDING LICENSED RETAIL TOBACCO ESTABLISHMENTS AND AMENDING CHAPTER 9, ARTICLE 8 OF THE NORTHGLENN MUNICIPAL CODE REGARDING UNLAWFUL POSSESSION OF TOBACCO PRODUCTS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. Chapter 18 of the Northglenn Municipal Code is amended with a new Article 19 entitled "Licensed Retail Tobacco Establishments" to read as follows:

ARTICLE 19.

LICENSED RETAIL TOBACCO ESTABLISHMENTS

Section 18-19-1. Purpose. The purpose of this Article is to ensure compliance with the business standards and practices of the City, to regulate the sale of tobacco products at retail, prohibit sales of tobacco products to persons under twenty-one (21) years of age, and to encourage responsible tobacco product retailing.

Section 18-19-2. Authority. The City Council hereby finds, determines and declares that it has the power to adopt this Article pursuant to:

- (a) The Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.;
- (b) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers);
- (c) Section 31-15-103, C.R.S. (concerning municipal police powers);
- (d) Section 31-15-401, C.R.S. (concerning municipal police powers); and
- (e) Section 31-15-501, C.R.S. (concerning municipal authority to regulate businesses).

Section 18-19-3. Definitions. For purposes of this Article, the following terms shall have the following meanings:

Applicant means a person twenty-one (21) years of age or older who has applied for a license or renewal of a license issued pursuant to this Article. If the applicant is an entity and not a natural person, applicant shall include all persons who are members, managers, officers and directors of such entity.

Cigarette means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

1. Any roll of tobacco wrapped in paper or in any substance not containing tobacco;
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 described in subsection (1) hereof.
4. The term "cigarette" includes 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.

Cigar means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any other substance containing tobacco. For purposes herein, cigar includes without limitation tobacco products known or labeled as a "cigar," "cigarillo" or "little cigar."

Electronic Smoking Device means any product containing or delivering nicotine intended for human consumption that can be used by an individual to simulate smoking in the delivery of nicotine or any other substance, even if marketed as nicotine-free, through inhalation from the product. Electronic smoking device includes any refill, cartridge or component part of a product, whether or not marketed or sold separately. Electronic Smoking Device does not include any product that has been approved or certified by the United States Food and Drug Administration for Sale as a tobacco cessation product or for other medically approved or certified purposes.

License means a Retail Tobacco Business License.

Licensed Premises means the premises specified in an application for a license pursuant to this Article that is owned or in possession of the Licensee and within which the Licensee is authorized to distribute, sell, or store tobacco products in accordance with the provisions of this Article.

Licensee means any Person licensed, registered, or permitted pursuant to this Article.

Little cigar means any roll of Tobacco other than a Cigarette wrapped entirely or in part in Tobacco and weighing no more than three pounds per thousand. "Little Cigar" includes without limitation any product known or labeled as "small cigar" "cigarillo" or "little cigar."

Local Licensing Authority means the Liquor Licensing Authority of the City of Northglenn.

Retail Tobacco Business means a person or entity engaged in the retail sale of tobacco products in the City.

Tobacco product means:

1. Any product which contains, is made or derived from tobacco or used to deliver nicotine, synthetic nicotine or other substances intended for human consumption, whether heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means, including without limitation cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, bidis, snus, nicotine products, mints, hand gels;
2. Electronic smoking devices; and
3. Notwithstanding any provision of subsections (1) and (2) hereof to the contrary, *tobacco product* includes any component, part, accessory or associated tobacco paraphernalia of a tobacco product whether or not sold separately.

Tobacco product does not include any product that contains marijuana or any product made from or derived from tobacco and approved by the Food and Drug Administration for use in connection with cessation of smoking.

Section 18-19-4. Licenses Required. It shall be unlawful for any person to establish or operate a Retail Tobacco Business without first having obtained licenses for such business from the state and local licensing authorities, as applicable. Such licenses shall be kept current at all times, and the failure to maintain current licenses shall constitute a violation of this Section.

Section 18-19-5. Location Criteria.

(a) Prior to the issuance of a license for a Retail Tobacco Business, the local licensing authority shall determine whether the proposed location complies with the requirements of this Section. Failure to comply with this Section shall preclude issuance of a license.

(b) No new Retail Tobacco Business shall be located at the following locations:

(1) Within five hundred (500) feet of a licensed childcare facility, or any kindergarten, primary, secondary, middle, junior, or senior high school educational facility, either public or private;

(2) Within five hundred (500) feet of any public park, public pool, or public recreational facility; or

(3) Upon any City of Northglenn owned property.

(c) The distances described in subsection (b) shall be measured from the nearest property line of land used for school purposes to the nearest portion of the building or structure housing the Retail Tobacco Business using a route of direct pedestrian access.

(d) The suitability of a location for a Retail Tobacco Business shall be determined at the time of the issuance of the first license for such business. The fact that changes in the neighborhood that occur after the issuance of the first license might render the site unsuitable for a Retail Tobacco Business under this Section shall not be grounds to suspend, revoke or refuse to renew the license for such business so long as the license for the business remains continuously in effect.

Section 18-19-6. Application for a Retail Tobacco Business License.

(a) A person seeking a new Retail Tobacco Business License, or a renewal of a Retail Tobacco Business License must apply to the local licensing authority on forms provided by the City Clerk.

(b) An applicant shall provide the following information for the proposed Retail Tobacco Business License:

(1) The name, address and date of birth of the owner or owners of the Retail Tobacco Business. If the owner is a corporation, partnership, limited liability company or similar business entity, the application shall include the name and address of all principals. If the owner is not a natural person, the name and address of the entity, its legal status, and proof of registration with, or a certificate of good standing from, the Colorado Secretary of State, and the contact information for the person that is authorized to represent the entity shall be provided;

(2) The name, address and date of birth of the on-site manager, if the manager is proposed to be someone other than the owner, or if the owner is an entity other than a natural person;

(3) If the applicant is not the owner of the proposed licensed premises, a notarized statement from the owner of such property authorizing the use of the property for a Retail Tobacco Business;

(4) A copy of any deed, lease, contract or other document reflecting the right of the applicant to possess the proposed licensed premises along with the conditions of occupancy of the premises;

(5) Evidence of a valid sales tax license;

(6) Acknowledgement by the applicant that any violation of a granted Retail Tobacco License is subject to the provisions of Section 18-19-12 of this Article; and

(7) Any additional information that the local licensing authority reasonably determines to be necessary in connection with the investigation and review of the application.

(c) An applicant shall verify the truthfulness of the information required by this Section by the applicant's signature on the application.

Section 18-19-7. Persons prohibited as licensees and employees.

(a) No license shall be issued to, held by, or renewed by any of the following:

(1) Any person until all applicable fees have been paid;

(2) Any person who is not of good moral character satisfactory to the local licensing authority;

(3) Any corporation, partnership, association or company, any of whose officers or directors are not of good moral character satisfactory to the local licensing authority;

(4) Any person employing, assisted by, or financed in whole or in part by any other person who is not of good character and reputation satisfactory to the local licensing authority;

(5) Any natural person under twenty-one (21) years of age;

(6) Any person who has discharged a sentence for a felony conviction within the past five (5) years;

(7) Any person who has made a false, misleading or fraudulent statement on their application;

(8) Any person who fails to file any tax return with a taxing agency, stay out of default on a government-issued student loan, pay child support, or remedy outstanding delinquent taxes; or

(9) Any person whose license for a Retail Tobacco Business in another city, city and county or state has been revoked.

(b) Jurisdiction.

(1) In investigating the qualifications described herein, the local licensing authority may have access to criminal history record information furnished by a criminal justice agency subject to any restrictions imposed by such agency. In the event the local licensing authority takes into consideration information concerning the applicant's criminal history record, the local licensing authority shall also consider any information provided by the applicant regarding such criminal history record, including without limitation evidence of rehabilitation, character references, and educational achievements, especially those

items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license.

(2) As used in subsection (b)(1) of this Section, "criminal justice agency" means any federal, state, or municipal court or any governmental agency or sub-unit of such agency that performs the administration of criminal justice pursuant to a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice.

Section 18-19-8. Processing and Consideration of Application.

(a) Upon receipt of a completed application, the City Clerk shall circulate the application to all affected departments of the City to determine whether the application is in full compliance with all applicable laws, rules, and regulations.

(b) Upon receipt of an application for a new Retail Tobacco Business License, the City Clerk shall determine whether to approve or deny the application.

(c) Before entering a decision approving or denying the application for a License, the City Clerk shall consider, except where this Article specifically provides otherwise, the facts and evidence adduced as a result of its investigation, and any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed.

(d) The City shall, prior to issuance of the license, perform an inspection of the proposed licensed premises to determine compliance with any applicable requirements of this Article or other applicable requirements of the Northglenn Municipal Code.

(e) The City Clerk shall deny any application that does not meet the requirements of this Article. The City Clerk shall also deny any application that contains any false, misleading or incomplete information. The City Clerk shall also deny or refuse to issue a license for good cause. "Good cause" shall mean:

(1) The licensee or applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of state or local law, rules, or regulations;

(2) The licensee or applicant has failed to comply with any special terms or conditions that were placed on its license pursuant to an order of the state or local licensing authority; or

(3) The licensed premises has been operated in a manner that adversely affects the public health or the safety of the immediate neighborhood in which the establishment is located.

(f) The City Clerk shall issue the decision approving or denying the license within thirty (30) days of the receipt of the completed application.

(g) In the event the City Clerk determines to deny a license under this Article, the applicant may appeal the decision of the City Clerk by submitting a written appeal to the City Clerk within ten (10) days of the date of the decision by the City Clerk, which appeal shall then be forwarded by the City Clerk to the local licensing authority.

(1) The local licensing authority, in determining whether to affirm or reverse the decision of the City Clerk shall consider the qualifications of the applicant for the conduct of the type of business proposed, and the basis for "good cause" relied upon by the City Clerk in determining to deny the issuance of the license.

(2) Review by the local licensing authority of the City Clerk's decision shall be according to Chapter 3, Article 7 of the Northglenn Municipal Code, and the burden of proof shall be on the applicant to show that the City Clerk's decision is not supported by competent evidence.

(h) The decision of the local licensing authority shall not be subject to further administrative review but only subject to review by a court of competent jurisdiction in accordance with Section 18-19-22 of this Article.

Section 18-19-9. Fees.

(a) Upon issuance of a license or any renewal of a license, the licensee shall pay to the City a fee in an amount determined by the City by separate resolution to be sufficient to cover the annual cost of inspections conducted pursuant to this Article by the Northglenn Police Department, and such other departments of the City as may be designated by the local licensing authority, for the purpose of determining compliance with the provisions of this Article and any other applicable state or local laws or regulations.

(b) In addition to the annual license fee, the licensee shall pay to the City fees in an amount determined by the City by separate resolution to be sufficient to cover the administrative costs of the City associated with applications for annual renewal, transfer or change in ownership, change in manager, or change of location.

Section 18-19-10. License Duration and Renewal.

(a) Upon issuance of a license, the City shall provide the licensee with one (1) original of such license for each Retail Tobacco Business to be operated by the licensee in the City. Each such copy shall show the name and address of the licensee and the address of the licensed premises at which it is to be displayed.

(b) Each license issued pursuant to this Article shall be valid for one (1) year from the date of issuance and may be renewed only as provided in this Article. All renewals of a license shall be for one (1) year. An application for the renewal of an existing license shall be made to the local licensing authority on forms supplied by the City Clerk not more than sixty (60) days and not less than thirty (30) days prior to the date of expiration of the license. A licensee may submit to the local licensing

authority a late renewal application on the prescribed forms and pay a non-refundable late application fee in an amount determined by the City by separate resolution for a renewal application made less than thirty (30) days prior to the date of the expiration of the license. All other provisions concerning renewal applications apply to a late renewal application. The timely filing of a completed renewal application or a late renewal application shall extend the current license until a decision is made on the renewal.

(c) A licensee whose license expires and for which a renewal application has not been received by the expiration date shall be deemed to have forfeited its license under this Article. The City shall not accept renewal applications after the expiration date of such license.

(d) A licensee whose license expires shall not operate until all necessary new licenses have been obtained.

Section 18-19-11. Renewal Fee Incentives.

(a) An application for renewal of an existing license may be eligible for a reduction in the annual renewal fee in an amount determined by Resolution if the application can show the presence of the items set forth in this subsection (a) in use at the Retail Tobacco Business:

(1) Use of identification scanners or entry of date of birth of purchaser for completion of all sales;

(2) The posting of public health education or underage use prevention signage;

(3) Completion by all employees of responsible vendor training; or

(4) Maintaining a written policy regarding identification checking.

(b) Proof of the use or existence of any of the above conditions shall be in the form required by the City Clerk, and may include self-certification on the renewal application and verification by the Northglenn Police Department during annual inspection.

(c) Ultimate determination of eligibility for renewal fee reduction shall be at the sole discretion of the City Clerk.

Section 18-19-12. Nonrenewal, Suspension or Revocation of License.

(a) The local licensing authority may, after notice and hearing, suspend, revoke or refuse to renew a license for good cause. The local licensing authority is authorized to adopt rules and procedures governing the conduct of such hearings.

(b) The City Clerk, upon determining that good cause may exist for nonrenewal of a license issued pursuant to this Article, shall forward any such application for renewal to the local licensing authority, and the local licensing authority shall

conduct a public hearing on whether good cause exists for nonrenewal within forty-five (45) days of the date of the City Clerk forwarding such application on to the local licensing authority.

(c) The local licensing authority may, in its discretion, revoke or elect not to renew any license if it determines that the licensed premises has been inactive, without good cause, for at least one year.

Section 18-19-13. Display of License.

(a) Each license shall be limited to use at the premises specified in the application for such license, which premises must be a permanent location.

(b) Each license shall be continuously posted in a conspicuous location on the licensed premises.

Section 18-19-14. Management of Licensed Premises. Licensees who are natural persons shall either manage the licensed premises themselves or employ a separate and distinct manager on the premises and report the name of such manager to the local licensing authority. Licensees that are entities shall employ a manager on the premises and report the name of the manager to the local licensing authority. All managers must be natural persons who are at least twenty-one (21) years of age. No manager shall be a person who has discharged a sentence for a felony conviction within the past five (5) years.

Section 18-19-15. Change in Management, Financial Interest, Ownership, or Location.

(a) Each licensee shall report any change in managers to the local licensing authority within thirty (30) days after the change.

(b) Each licensee shall report in writing to the local licensing authority any transfer or change of financial interest in the license holder or in Retail Tobacco Business that is the subject of the license. Such report must be filed with the local licensing authority within thirty (30) days after any such transfer or change. A transfer application shall be required for any transfer of the capital stock of a corporation or any other interest totaling more than ten percent (10%) of the stock in any one (1) year, as well as any transfer of a controlling interest in the corporation whenever a sufficient number of shares have been transferred to effectuate the transfer of a controlling interest. No person having or acquiring a financial interest in the Retail Tobacco Business that is the subject of a license shall be a person who has discharged a sentence for a felony conviction within the past five (5) years.

(c) For a transfer of ownership of the Retail Tobacco Business, a license holder shall apply to the local licensing authority on forms provided by the City Clerk. In considering whether to permit a transfer of ownership, the local licensing authority shall consider the requirements of this Article and the regulations promulgated in conformance therewith.

(d) Change of location.

(1) A licensee within the City that seeks to change its location may move their permanent location so long as the new location conforms to the requirements of this Article as follows:

- (A) The proposed changed location must conform to the requirements of Section 18-19-5 of this Article; and
- (B) The applicant shall provide the information required by Section 18-19-6 of this Article.

Section 18-19-16. Inspection of Licensed Premises. During all business hours and other times of apparent activity, all licensed premises shall be subject to inspection by the Northglenn Police Department and all other City departments designated by the local licensing authority for the purpose of investigating and determining compliance with the provisions of this Article and any other applicable state and local laws or regulations. Where any part of the licensed premises consists of a locked area, such area shall be made available for inspection upon request.

Section 18-19-17. Prohibited Activity.

(a) It shall be unlawful for any licensee to sell or distribute a tobacco product to a person under twenty-one (21) years of age. No licensee shall sell or transfer a tobacco product without first examining the government-issued photographic identification of the recipient to confirm that the recipient is at least twenty-one (21) years of age. The minimum legal age for the purchase of tobacco products shall be prominently displayed in the entrance or other clearly visible location of the licensed premises.

(b) A licensee shall not allow any person who is younger than eighteen (18) years of age to sell a tobacco product during the course of operation of the business.

(c) A licensee shall stock and display all tobacco products in a manner so they are 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.

(d) A licensee shall not display tobacco products in public view during the timeframe in which a license is suspended. A licensee shall cease to display tobacco products in public view upon revocation of a license issued pursuant to this Chapter.

(e) The sale of tobacco products from a vending machine or self-service display is prohibited.

(f) The distribution of free samples of tobacco products is prohibited.

Section 18-19-18. Mobile Premises. Each Retail Tobacco Business shall be operated from a permanent location. No Retail Tobacco Business shall be permitted to operate from a moveable, mobile or transitory location.

Section 18-19-19. Violations and Penalties.

(a) If the local licensing authority finds that a licensee has violated any provision of this Article, the local licensing authority may deny, suspend, revoke, or deny renewal of a license issued pursuant to this Article. Additionally, the local licensing authority may order civil penalties to be imposed upon the licensee for the violation. The guidelines set forth below shall be utilized by the local licensing authority for all violations set forth in Section 18-19-17 of this Article, provided that such presumptive penalties shall not restrict the local licensing authority's discretion to impose a greater or lesser penalty if the circumstances warrant:

(1) One (1) violation within twenty-four (24) months: a civil penalty of one thousand dollars (\$1,000.00) and a seven (7) day suspension to be served with three (3) days of actual suspension and four (4) days held in abeyance for two (2) years from the date of the final order of the Authority;

(2) Two (2) violations within twenty-four (24) months: a civil penalty of two thousand dollars (\$2,000.00) and a fourteen (14) day suspension to be served with six (6) days of actual suspension and eight (8) days held in abeyance for two (2) years from the date of the final order of the Authority. Any period of actual suspension must run consecutively to any previously imposed period of suspension that was held in abeyance; and

(3) Three (3) violations within twenty-four (24) months: a civil penalty of three thousand dollars (\$3,000.00) and a thirty (30) day suspension to be served in its entirety with no days held in abeyance. Any period of actual suspension must run consecutively to any previously imposed period of suspension that was held in abeyance.

(4) Four (4) violations within twenty-four (24) months: a civil penalty of \$5,000 and revocation of the license issued pursuant to this Article. The retailer shall be prohibited from applying for a new Retail Tobacco License issued pursuant to this Article for three (3) years from the date of the final order of the Authority.

(b) In addition to the possible civil penalties and denial, suspension, revocation, or nonrenewal of a license under the provisions of Subsection (a) of this Section, any person, including without limitation any licensee, manager or employee of a Retail Tobacco Business, or any customer of such business, who violates any of the provisions of this Article, shall be subject to the following penalties:

(1) It shall be a misdemeanor offense for any person to violate any provision of this Article. Any person convicted of having violated any provision of this Article shall be punished as set forth in Section 1-1-10 of the Northglenn Municipal Code.

(2) The operation of a Retail Tobacco Business without a valid license issued pursuant to this Article may be enjoined by the City in an action brought in a court of competent jurisdiction, including the Northglenn Municipal Court.

(3) The operation of a Retail Tobacco Business without a valid license issued pursuant to this Article is also specifically determined to be a public nuisance pursuant to Section 9-11-3 of the Northglenn Municipal Code.

Section 18-19-20. Other Laws Remain Applicable.

(a) To the extent the State has adopted or adopts in the future any additional or stricter law or regulation governing Retail Tobacco Businesses, the additional or stricter regulation shall control the establishment or operation of any such business in the City. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any license under this Article, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

(b) Any licensee may be required to demonstrate, upon demand by the local licensing authority or by law enforcement officers, that the source and quantity of any tobacco product found upon the licensed premises are in full compliance with any applicable state or federal law or regulation.

Section 18-19-21. Rules and Regulations; Administrative Approvals.

(a) The City Manager shall have the authority from time to time to adopt, amend, alter and repeal administrative rules and regulations, and file the same with the City Clerk, as may be necessary for the proper administration of this Article.

(b) In the event that there have been no violations of this Article during the preceding year, and if there is no other derogatory information regarding the licensee, its partners, officers, directors, managers, or shareholders, then the City Clerk may grant the renewal of a Retail Tobacco Business License, transfer of ownership, change of corporate status, a request for modification of the licensed premises that does not include an expansion of the licensed premises, or manager registration on behalf of the licensing authority. If, however, the City Clerk's investigation discloses any proved or alleged violations of the provisions of this Article or derogatory information as described above, the Clerk shall schedule action on the application before the local licensing authority.

Section 18-19-22. Judicial Review. Decisions by the local licensing authority are subject to judicial review by the District Court of Adams County pursuant to C.R.C.P. 106.

Section 2. Section 9-8-11, subsection (b) of the Northglenn Municipal Code is hereby amended to read as follows:

Section 9-8-11. Unlawful Possession or Consumption of Tobacco or Nicotine Products by Juveniles.

* * *

(b) Prima facie evidence of a violation of this Section shall consist of:

(1) Evidence that the defendant was under the age of ~~18~~ 21 years at the time of the offense;

(2) Evidence that the defendant possessed tobacco or nicotine products within the City of Northglenn;

(3) Evidence that the defendant was in the possession or control of any package or container, when the label affixed thereto identified said package or container as containing a tobacco or nicotine product.

INTRODUCED, READ AND ORDERED POSTED this 23rd day of November, 2020.


MEREDITH LEIGHTY
Mayor

ATTEST:



JOHANNA SMALL, CMC
City Clerk

PASSED ON SECOND AND FINAL READING this 14th day of December, 2020.



MEREDITH LEIGHTY
Mayor

ATTEST:



JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:



COREY Y. HOFFMANN
City Attorney