

ORDINANCE NO. 2022-03

AN ORDINANCE AMENDING PART 10, "OFFENSES AND CRIMES," CHAPTER 4, "OFFENSES AGAINST THE HEALTH, WELFARE AND MORALS" OF THE CODE OF ORDINANCES OF THE TOWN OF LUTHER, OKLAHOMA, AND SPECIFICALLY AMENDING SECTION 10-422, "YOUTH ACCESS TO TOBACCO," BY BRINGING THE PROVISIONS FOR DEFINITIONS, FURNISHING TOBACCO, NICOTINE AND VAPOR PRODUCTS TO THOSE UNDER TWENTY-ONE YEARS OF AGE, PROHIBITING THE DISTRIBUTION OF TOBACCO PRODUCTS AND VAPOR PRODUCT SAMPLES, DISPLAY OF TOBACCO, NICOTINE AND VAPOR PRODUCTS, AND REPORT OF VIOLATIONS AND COMPLIANCE CHECKS, INTO COMPLIANCE WITH STATE STATUTE; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF LUTHER, OKLAHOMA THAT:

SECTION I: Section 10-422 of the Code of Ordinances of the Town of Luther, Oklahoma, is hereby added to read as follows:

A. DEFINITIONS.

1. Person: means any individual, firm, fiduciary, partnership, corporation, trust, or association, however formed;
2. 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;
3. 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;
4. Sampling: means the distribution of samples to members of the public in a public place or consumption;
5. Tobacco Product: means any product that contains tobacco and is intended for human consumption;
6. 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. This term shall not include products approved by the United States Food and Drug Administration for smoking cessation.

7. 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.

B. UNLAWFUL TO SELL OR FURNISH TOBACCO, NICOTINE OR VAPOR PRODUCTS TO PERSONS UNDER TWENTY-ONE YEARS OF AGE

I. 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 purchaser or recipient if an ordinary person would conclude on the basis of appearance that the purchaser may be less than twenty-one (21) years of age. If an individual engaged in the sale or distribution of tobacco products, nicotine products or vapor products has demanded proof of age from a 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.

3. Any violation of subsection a or b of this article is an offense against the Town of Luther; upon conviction of any such offense, the violator shall be punished in compliance with Oklahoma State law.

4. Evidence 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 establishes that:

1. 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
2. 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 physical/visual examination of the provided identification.

5. 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.

C. 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 be in compliance with Oklahoma State law.

D. 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, vapor products in any manner that allows the public access to the tobacco products, nicotine products, vapor products without assistance from the person displaying the tobacco products, nicotine products, vapor products or an employee or 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 offence

E. REPORT OF VIOLATIONS AND COMPLIANCE CHECKS.

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 Clerk or their 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 offences penalized by the ABLE Commission as administrative fines and the offences 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 II. If any section, sentence, clause or phrase of this ordinance or any part thereof is for any reason found to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance or any part thereof.

SECTION III. All ordinances in conflict herewith are hereby repealed.

PASSED AND APPROVED this 8th day of March, 2022.


MAYOR WILLIAM TERRY KRPS

ATTEST:


TOWN CLERK



Approved as to form and legality:


Town Attorney