

RESOLUTION NO. R-9-2024

**A RESOLUTION AUTHORIZING AMENDMENT OF ORDINANCE #1663
TO BE KNOWN AND CITED AS "THE PROTECTION OF PERSONS
UNDER TWENTY-ONE YEARS OF AGE FROM TOBACCO ACT".**

WHEREAS, the City Council of the City of La Junta finds it in the best interest of the public health, safety and welfare to adopt and implement this Resolution to update and amend Ordinance #1663 to be known and cited as "The Protection of Persons Under Twenty-one Years of Age from Tobacco Act"; and

WHEREAS, the City of La Junta recognizes the dangers associated with under-aged access to tobacco products; and

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

WHEREAS, regulating the sale of tobacco products is an appropriate proven deterrent to protect the health, safety and welfare of young people in the City of La Junta; and

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

WHEREAS, it is the intent of the City Council in enacting this Resolution to make amendments to the previous ordinance to prohibit the sales of tobacco products to youth; to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those laws that prohibit or discourage the sale or distribution of tobacco products to persons under the age of 21 years; and to reduce the impact of tobacco and nicotine product use by youth in the City of La Junta.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LA JUNTA, COLORADO, AS FOLLOWS:

SECTION 1. That the following amendments to the previously adopted and implement Ordinance #1663 known and cited as "The Protection of Persons Under Twenty-one Years of Age from Tobacco Act" is hereby enacted:

(A) Definitions.

As used in this Ordinance, the following words shall have the following meanings, unless the context clearly requires otherwise:

- (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 Ordinance, 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) *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.
- (3) *Tobacco paraphernalia* means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.
- (4) *Tobacco product* includes (1) any product that contains tobacco, 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.

- (5) *Arm's Length Transaction* means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this ordinance is not an Arm's Length Transaction.
- (6) *Department* means the La Junta Police Department or City designated Person(s) shall enforce the provisions of this ordinance.
- (7) *Licensing Administrator* means any Person or Person(s) within the La Junta government designated with responsibilities by the La Junta administration for license issuance, renewal, and collection of fees.
- (8) *Person* means any individual, corporation, business trust, estate trust, partnership, association, company, organization, sole proprietorship, or any other legal entity.
- (9) *Principal* means any Person who possesses controlling authority, active management, supervision or control of the applicant, business or license, or who employs agents subject to the principal's general control and instruction.

(B) License Required.

- (1) It shall be unlawful for any Person to act as a Tobacco Product Retailer without first obtaining and then maintaining a valid License for each retail Premises where the activity occurs. Retailing without a valid License is a nuisance as a matter of law.
- (2) Any Person who sells or attempts to sell Tobacco Products within the City for public consumption shall be deemed to be acting as a Tobacco Product Retailer and required to obtain a License.

(C) Applicant Eligibility.

All applications for a Tobacco Retailer License must be of legal age to purchase or possess Tobacco Products.

(D) Lawful Business Operation.

It shall be a violation of the License to violate any local, state, or federal law applicable to Tobacco Products, Tobacco Paraphernalia, or Tobacco Product Retailing.

(E) Display of License.

Each License shall be displayed on the Premises of the Licensed Tobacco Retailer in a publicly visible location.

(F) 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 sales or handling of Tobacco Products shall sell, stock, retrieve, or otherwise handle Tobacco Products.

(G) Positive Identification Required.

No person shall sell or transfer a Tobacco Product to another person who appears to be under the age of fifty (50) years of age without first examining the government issued photographic identification of the recipient to confirm that the recipient is at least the minimum legal sales age under the laws of Colorado to purchase and possess Tobacco Products.

(H) No Persons Under Twenty-One Years Permitted in a Retail Tobacco Business.

(1) No Person who is younger than the minimum legal sales age of twenty-one (21) years established by the laws of Colorado shall be admitted to or be on the Premises of a Retail Tobacco Business. The presence of an under-aged Person on the Premises of a Retail Tobacco Business shall result in a violation of this Ordinance.

(2) The owner of a Retail Tobacco Business shall post and keep at all times visible to the public in a conspicuous

place on the Premises a sign to be provided by the City Clerk's office which shall read as follows:

WARNING: It is illegal for any person under 21 years of age to be admitted to or be on the premises of this business, and upon conviction, a fine may be imposed.

(I) Mobile Vending Prohibited.

No License may issue to authorize Tobacco Product Retailing on Premises other than a fixed location.

(J) Prohibition of Sale of Tobacco Products by a Self-Service Display.

The sale of Tobacco Products through the use of a Self-Service Display is prohibited.

(K) False and Misleading Advertising Prohibited.

No retailer or employee or agent thereof without a valid Tobacco Retailer License, including a retailer whose License has been suspended or revoked:

(1) shall display Tobacco Products in public view. The public display of Tobacco Products in violation of this part shall constitute Tobacco Retailing without a License; and

(2) shall display any advertisement relating to a Tobacco Product that promote the sale, transfer, or distribution of such products from the Premises that could lead a reasonable consumer to believe that such products can be obtained on the Premises.

(L) Possession of Tobacco Products and/or Paraphernalia by a Person Younger than the Minimum Age for Sales Established by Colorado Laws is Prohibited.

No Person who is younger than the minimum age established by the laws of Colorado for the purchase of Tobacco Products shall possess Tobacco Products or Tobacco Paraphernalia. It is not the intent of the City of La Junta, its employees/agents, or Law Enforcement to penalize youth for possession of Tobacco Products and/or Tobacco Paraphernalia. The intent of this provision is to provide education on the harmful effects of Tobacco to the person who is younger

than the minimum age established by the laws of Colorado and confiscate Tobacco Products and/or Tobacco Paraphernalia.

- (1) Any Person who is younger than the minimum age established by the laws of Colorado found to be in violation of any provision of this Ordinance shall not be subject to a penalty or fine.

(M) Application Procedure.

Application for a Tobacco License shall be submitted in the name of each Person or Principal seeking to sell, transfer, or distribute Tobacco Products and signed by each Person or Principal or authorized agent thereof.

- (1) It is the responsibility of each applicant to be informed regarding all laws applicable to Tobacco Product Retailing, including those laws affecting the issuance of a Tobacco Product Retailer License. No Licensee shall rely on the issuance of a License as a determination by the City that a Licensee has complied with all laws applicable to Tobacco Product Retailing. A License issued contrary to this part, contrary to any other law, or on the basis of false or misleading information supplied by an applicant shall be revoked pursuant to previous sections of this code.

- (2) All applications shall be submitted on a form supplied by the License Administrator. The contents of the application shall meet the requirements provided herein.

(N) Issuance of License.

Upon the receipt of a completed application and Fee, the License Administrator or designated party thereof shall issue a License unless substantial evidence demonstrates that one or more of the following bases for denial exists:

- (1) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this part.
- (2) The application seeks authorization for a License at a Premise where eligibility for a License is prohibited.

(3) The application seeks authorization for a License to a Person or Principal to whom this part prohibits a License to be issued.

(4) The application seeks authorization for a License that is unlawful pursuant to this Code or that is unlawful pursuant to any other law.

(O) Term, Renewal and Expiration.

(1) Term. The term of a License is for the calendar year of the date of issuance of the License.

(2) Renewal of License. A License is invalid if the appropriate Fee has not been timely paid in full or if the term of the License has expired. Each Licensee shall apply for the renewal of the License and submit the Fee to the License Administrator no later than thirty (30) days prior to the expiration of the current License term.

(3) Expiration of License. A License that is not timely renewed shall expire at the end of its term. To renew a License not timely renewed pursuant to subparagraph (2), a Person or Principal must:

a. Submit the License Fee and application renewal form in accordance with Section (M) of this code.

(P) License Transfer Not Allowed.

(1) A License shall not be transferred from one Person or Principal to another Person or Principal or from one Premises to another. A new License is required whenever a Tobacco Product Licensed Premises has a change in ownership.

(2) Notwithstanding any other provision of this part, prior violations at a Licensed Premises shall continue to be counted against a License. Ineligibility periods shall continue to apply to a License unless:

a. the Premises has been transferred to new Person(s) or Principal(s) in an Arm's Length Transaction; and

b. the new Person(s) or Principal(s) of the Premises provide the City with clear and convincing evidence that the new Person(s) or Principal(s) have

acquired the Premises in an Arm's Length Transaction.

(Q) Limited, Conditional Privilege

Nothing in this part shall be construed to grant any Person or Principal obtaining a License any status or right other than the limited conditional privilege to act as a Tobacco Product Retailer on the Premises identified on the face of the License. Nothing in this part shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law.

(R) License Fee.

- (1) The Fee to issue or to renew a License shall be \$140.00 per calendar year.
- (2) The License Fee shall be calculated to recover only the cost of administration, education and enforcement of the License.
- (3) Fees are non-refundable except as may be required by law.
- (4) As deemed appropriate by the City, the Fee may be increased in accordance with Article X Section 20 of the Colorado Constitution.
- (5) The Fee shall be prorated at a rate of $1/365$ of the amount of the annual fee, times the number of days remaining in the calendar year as the date as of the License becomes effective.

(S) Compliance Monitoring.

- (1) Compliance with this part shall be monitored by any peace officer, code enforcement official, or other Person(s) designated by the City. Any peace officer may enforce the penal provisions of this part. The City may designate any number of additional Persons to monitor compliance.
- (2) The Department shall inspect each Licensed Retailer at least two (2) times in each calendar year of Licensure. Nothing in this paragraph shall create a right of action in any Licensee or other party against the City or its agents.

(3) The City shall not enforce any law establishing a minimum age for Tobacco Product purchases or possession against a Person who otherwise might be in violation of such law because of the Person's age (hereinafter "Operative") if the potential violation occurs when:

a. The Operative is participating in an inspection supervised by a peace officer, code enforcement official, or the Person or Department designated by the City to monitor compliance with this part;

b. the Operative is acting as an agent of a Person or Department designated by the City to monitor compliance with this part; or a violation of any law designated in this Ordinance or the General Licensing Code of La Junta.

i. Upon a finding of a first violation of this part at a Licensed Premises within any thirty-six (36) month period, the License holder or its agents or employees shall be imposed a fine of \$150.00

ii. Upon a finding of a second violation of this part at a Licensed Premises within any thirty-six (36) month period, the License holder or its agents or employees shall be imposed a fine of \$300.00.

iii. Upon a finding of a third violation of this part at a Licensed Premises within any thirty-six (36) month period, the License shall be revoked and the Licensee shall be deemed ineligible for a License for one (1) year.

(4) Appeal of Suspension or Revocation.

A decision of the Licensing Officer, Hearing Officer, or designated representative thereof to suspend or revoke a License is appealable to District Court pursuant to CRPC 106 (a) (4).

(5) Revocation of License Wrongly Issued.

A License shall be revoked if the Licensing Officer, Hearing Officer, or designated representative thereof

finds, after the Licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a License under this article which existed at the time application was made or at any time before the License issued. The decision by the Licensing Officer, Hearing Officer, or designated representative thereof shall be the final decision. Such a revocation shall be without prejudice to the filing of a new License application.

(T) Tobacco Product Retailing without a License.

(1) In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the Licensing Officer, Hearing Officer or designated representative thereof finds based on a preponderance of evidence, after notice and an opportunity to be heard, that any Person or Principal has engaged in Tobacco Product Retailing at a location without a valid License, either directly or through the Person's or Principal's agents or employees, the Person or Principal shall be ineligible to apply for, or to be issued, a License and imposed a monetary fine as follows:

a. After a first violation of this part at a premises within any thirty-six (36) month period, the Person or Principal shall be imposed a fine of \$150.00.

b. After a second violation of this section at a location within any (36) month period, the Person or Principal shall be imposed a fine of \$300.00.

c. After a third or subsequent violation of this section at a location within any thirty-six (36) month period, the Person or Principal shall be imposed a fine of \$500.00.

(2) For the purposes of the civil remedies provided in this part,

a. Each day that a Tobacco Product is offered for sale in violation of this part; or

b. a Tobacco Product is distributed, sold, or offered for sale in violation of this part, shall constitute a separate violation of the retail License.

(U) Additional Remedies

- (1) The remedies provided in this part are cumulative and in addition to any other remedies available at law or in equity.
- (2) Whenever evidence of a violation of this part is obtained with the participation of an individual under the age of twenty-one (21) years old, such individual shall not be required to appear or give testimony in any civil or administrative process brought to enforce this part and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- (3) Violations of this are subject to a civil action brought by the City Attorney and are punishable by a civil fine of not less than \$200.00 and not exceeding \$1,000.00 per violation.
- (4) Violations of this part may, in the discretion of the City Attorney, be prosecuted as infractions or misdemeanors when the interests of justice so require.
- (5) Violations of this part are hereby declared to be public nuisances.
- (6) In addition to other remedies provided by this part or by other law, any violation of this part may be remedied by a civil action brought by the City, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

(V) Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is for any reason held or determined to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions hereof. The City Council hereby declares that it would have adopted each section, subsection, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

(W) That all former ordinances, resolutions, rules or regulations, or parts thereof, in conflict with this Ordinance are hereby repealed.

BE IT FURTHER RESOLVED by the City Council that these amendments to Ordinance #1663 shall take effect 30 days following adoption. Adopted this 1ST day of July, 2024.

The Mayor is authorized to sign on behalf of the City Council.

ATTEST:

CITY OF LA JUNTA


City Clerk


Mayor