

ORDINANCE NO 1573

**AN ORDINANCE CREATING THE REQUIREMENT OF A
NON-CIGARETTE TOBACCO RETAILER LICENSE
FOR CERTAIN RETAILERS WITHIN THE CITY OF LA JUNTA**

WHEREAS, the City Council hereby declares it to be in the interest of the health, safety and welfare of the Citizens of La Junta and a proper exercise of the police power to license retailers who sell Non-Cigarette Tobacco Products.

WHEREAS, the requirement for a Non-Cigarette Tobacco Product Retail License will not unduly burden the business activities of retailers who legally sell, transfer or otherwise distribute these products to adults. It will, however, allow the City to discourage violations of federal, state, and local tobacco-related laws and prevent youth access to Non-Cigarette Tobacco Products in a retail environment.

BE IT THEREFORE ORDAINED BY THE CITY COUNCIL OF THE CITY OF LA JUNTA, COLORADO THAT:

SECTION 1: The following Sections 5.50.100 through 5.50.120 inclusive are enacted as follows:

5.50.010 DEFINITIONS:

(a) ARM'S LENGTH TRANSACTION: 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 5.50.120 or 5.50.130 is not an Arm's Length Transaction.

(b) CIGARETTE: As defined in Colorado Revised Statutes section 39-28-202 (4).

(c) DEPARTMENT: The La Junta Police Department shall enforce the provisions of Section 5.50.100 through 5.50.190 inclusive.

(d) ELECTRONIC SMOKING DEVICE: An electronic device that, when activated, emits a vapor, aerosol, fume or smoke that may be inhaled or absorbed by the user, including but not limited to an e-cigarette, e-cigar, e-pipe, vape pen, e-hookah. Electronic smoking device includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance, with or without nicotine, intended to be aerosolized, vaporized or produces a fume or smoke during the use of the device intended for human consumption.

(e) LICENSING ADMINISTRATOR: 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.

(f) NON-CIGARETTE TOBACCO PRODUCT means:

(1) Any product other than a Cigarette containing, made, or derived from tobacco or used to deliver nicotine or other substances intended for human consumption, whether heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigars, little cigars, chewing tobacco, pipe tobacco, snuff, bidis, snus, mints, tobacco flavored toothpicks, hand gels; and

(2) Any Electronic Smoking Device.

(3) Notwithstanding any provision of subsections (1) and (2) to the contrary, "tobacco product" includes any component, part, accessory or associated tobacco paraphernalia of a tobacco product, whether or not sold separately.

(4) The term "Non-Cigarette Nicotine Tobacco Product" does not include marijuana.

(g) NON-CIGARETTE TOBACCO PRODUCT RETAILER: Any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, Non-Cigarette Tobacco Products, or Tobacco Paraphernalia. "Non-Cigarette Tobacco Retailing" shall mean the doing of any of these things.

This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

(h) PERSON: Any individual, corporation, business trust, estate trust, partnership, association, company, organization, sole proprietorship or any other legal entity

(i) PREMISES: All lands, structures, places, equipment and appurtenances connected to or used in any business; and also any personal property which is either affixed to, or is otherwise used in connection with business conducted on the premises.

(j) PRINCIPAL: 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.

(k) SELF-SERVICE DISPLAY: The open display or storage of Non-Cigarette Tobacco Products in a manner that is physically accessible in any way to the general public without the assistance of the Retailer or an employee or agent of the Retailer where direct person-to-person transfer of a Non-Cigarette Tobacco Product is not required. A vending machine is a form of Self-Service Display.

(l) SMOKE: The emissions or release of gases, particles, vapors, fumes or aerosols into the air from burning, heating or activation of any device, including, but not limited to a cigarette, electronic smoking device, e-cigarette, vape pens, e-hookahs or any other product by any name or descriptor when the apparent or usual purpose of burning, heating or activation of the device is human tasting and inhalation.

(m) SMOKING: The act of burning, heating, activation or carrying of any device, including, but not limited to a cigarette, cigar, pipe, hookah, or electronic smoking device, electronic cigarette, vape pen, e-hookah or similar device, by any other product name or descriptor, that results in the release of smoke, vapors or aerosols when

the apparent or usual purpose of the burning, heating or activation of the device is human inhalation.

(n) TOBACCO PARAPHERNALIA: Any item designed for the consumption, use, or preparation of any Non-Cigarette Tobacco Product.

5.50.020 REQUIREMENTS AND PROHIBITIONS:

(a) License Required. It shall be unlawful for any Person to act as a Non-Cigarette 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.

(1) Any Person who sells or attempts to sell Non-Cigarette Tobacco Products within the City for public consumption shall be deemed to be acting as a Non-Cigarette Tobacco Product Retailer and required to obtain a License.

(b) Applicant Eligibility. All applications for a Non-Cigarette Tobacco Retailer License must be of legal age to purchase or possess tobacco products.

(c) Lawful Business Operation. It shall be a violation of the License for a Licensee or any employee or agent of the Licensee to violate any local, state, or federal law applicable to Non-Cigarette Tobacco Products, Tobacco Paraphernalia, or Non-Cigarette Tobacco Product Retailing.

(d) Display of License. Each License shall be displayed on the Premises of the licensed retailer in a publicly visible location.

(e) Positive Identification Required. No Licensee or employee or agent thereof shall sell, transfer or distribute Non-Cigarette Tobacco Products or Tobacco Paraphernalia to another individual who appears to be under the age of thirty (30) years without first examining the government issued photographic identification of the recipient to confirm that the recipient is at least the minimum age under Colorado state law to purchase and possess Non-Cigarette Tobacco Products.

(f) Minimum Age for Selling, Stocking Non-Cigarette Tobacco Products. No Person who is younger than the minimum age established by Colorado state law to purchase or possess Non-Cigarette Tobacco Products shall sell, stock or handle Non-Cigarette Tobacco Products during the course of employment.

(g) Minors Prohibited. No person younger than the minimum age established by Colorado state law to purchase or possess Non-Cigarette Tobacco Products is permitted entrance into a Cigar-Tobacco Bar as defined in C.R.S. § 25-14-203 (4) or into a Tobacco Business as defined in C.R.S. § 25-14-203 (18).

(h) Mobile Vending Prohibited. No License may issue to authorize Non-Cigarette Tobacco Product Retailing on Premises other than a fixed location.

(i) Self Service Displays Prohibited. The sale, transfer or distribution of Non-Cigarette Tobacco Product(s) by means of a Self-Service Display is prohibited except on Premises where individuals under the minimum age to purchase such products are prohibited.

(j) False and Misleading Advertising Prohibited. No retailer or employee or agent thereof without a valid Non-Cigarette Tobacco Retailer License, including a retailer whose license has been suspended or revoked:

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

(2) shall display any advertisement relating to a Non-Cigarette Tobacco Product(s) 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.

5.50.030 APPLICATION PROCEDURE:

(a) Application for a License shall be submitted in the name of each Person or Principal seeking to sell, transfer or distribute Non-Cigarette 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 Non-Cigarette Tobacco Product Retailing, including those laws affecting the issuance of a Non-Cigarette 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 Non-Cigarette 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 5.44.120 of this Code. Nothing in this part shall be construed to vest in any Licensee any status or right to act as a Non-Cigarette Tobacco or Nicotine Product Retailer in contravention of any provision of law.

(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.

5.50.040 ISSUANCE OF LICENSE:

Upon the receipt of a completed application and Fee pursuant to 5.50.020, the License Administrator or designated party thereof shall issue a License unless substantial evidence demonstrates that one of more of the following bases for denial exists:

(a) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this part.

- (b) The application seeks authorization for a License at a Premise where eligibility for a License pursuant to 5.50.030 is prohibited.
- (c) The application seeks authorization for License to a Person or Principal to whom this part prohibits a License to be issued.
- (d) The application seeks authorization for a License that is unlawful pursuant to this Code or that is unlawful pursuant to any other law.

5.50.050 TERM, RENEWAL AND EXPIRATION

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

(b) **Renewal of License.** A License is invalid if the appropriate Fee has not been timely paid in full or is 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 days (30) prior to expiration of the current License term.

(c) **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 (b), a Person or Principal must:

(1) Submit the License fee and application renewal form in accordance with 5.50.040 of this Code; and

(2) Submit a signed affidavit affirming that the Licensee:

(i) Has not sold and will not sell any Non-Cigarette Tobacco or Nicotine Products or Tobacco Paraphernalia after the License expiration date and before the License is renewed; or

(ii) Has waited the period of time required by this part for Non-Cigarette Tobacco or Nicotine Retailing without a valid License before seeking renewal of the License.

5.50.060 NON-TRANSFERABLE

(a) License Transfer Not Allowed. 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 Non-Cigarette Tobacco Product Retail Licensed Premises has a change in ownership.

(b) 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 License unless:

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

(2) the new Person(s) or Principal(s) of the Premises provide the City with clear and convincing evidence that new Person(s) or Principal(s) have acquired the Premises in an Arm's Length Transaction.

5.50.070 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 Non-Cigarette Tobacco or Nicotine 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.

5.50.080 LICENSE FEE

(a) The fee to issue or to renew a License shall be \$140.00 per year payable on January 1st of each year.

(b) The Fee license shall be calculated to recover only the cost of administration, education and enforcement of the License.

(c) Fees are non-refundable except as may be required by law.

(d) As deemed appropriate by City, the Fee may be increased in accordance with Article X Section 20 of the Colorado Constitution.

(e) 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 of the date the License becomes effective.

5.50.090 COMPLIANCE MONITORING

(a) 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.

(b) 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.

(c) 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 "Minor Operative") if the potential violation occurs when:

(i) the Minor Operative is participating in an inspection supervised by a peace officer, code enforcement official, or the Person/Department designated by the City to monitor compliance with this Part;

(ii) the Minor Operative is acting as an agent of a Person/Department designated by the City to monitor compliance with this Part; or a violation of any law designated in this Title or the General Licensing Code of La Junta.

(1) Upon a finding of a first violation of this part at a licensed Premises within any thirty-six (36) month period, the license holder shall be imposed a fine of \$150.00.

- (2) Upon a finding of a second violation of this part at a licensed Premises within any thirty-six (36) month period, the license holder shall be imposed a fine of \$300.00
- (3) 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 Licensee shall be deemed ineligible for a License for one year.

(b) 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).

(c) 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.

5.50.100 TOBACCO PRODUCT RETAILING WITHOUT A LICENSE

(a) 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 Non-Cigarette 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 as follows:

(1) After a first violation of this part at a Premises within any thirty-six (36) month period, the license holder shall be imposed a fine of \$150.00.

(2) After a second violation of this section at a location within any thirty-six (36) month period, the license holder shall be imposed a fine of \$300.00.

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

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

(1) Each day that a Non-Cigarette Tobacco Product is offered for sale in violation of this part; or

(2) Non-Cigarette Tobacco Product distributed, sold, or offered for sale in violation of this part, shall constitute a separate violation of the retail license.

5.50.110 ADDITIONAL REMEDIES

(a) The remedies provided in this part are cumulative and in addition to any other remedies available at law or in equity.

(b) Whenever evidence of a violation of this part is obtained with the participation of an individual under the age of eighteen (18) years old, such individual shall 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.

(c) Violations of this are subject to a civil action brought by the City Attorney and are punishable by a civil fine not less than \$200.00 and not exceeding \$1,000.00 per violation.

(d) 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.

(e) Violations of this part are hereby declared to be public nuisances.

(f) 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.

5.50.120 COMPLIANCE WITH COLORADO REVISED STATUTES SECTION 39-22-623

This part is not, and shall not be construed, in any way as imposing a fee, license, or tax as a condition for engaging in the business of selling cigarettes or imposing a tax on cigarettes. The License in no way applies to the sale of cigarettes. If any provision of this part is found to impose a fee, license, or tax as a condition for engaging in the business of selling cigarettes, then that offending portion shall be deemed void.

INTRODUCED AND ORDERED PUBLISHED this 21st day of February, 2017.

PASSED AND APPROVED this 6th day of March, 2017.

EFFECTIVE DATE OF THIS ORDINANCE SHALL BE the 1st day of April, 2017.

CITY OF LA JUNTA



Lynn Horner, Mayor

ATTEST:



Melanie R. Scofield, City Clerk