

ORDINANCE RECORD

No. 728-REFIELD & COMPANY INC., OMAHA

ORDINANCE NO. 1446

AN ORDINANCE OF THE CITY OF LA VISTA, NEBRASKA, TO AMEND MUNICIPAL CODE SECTIONS 119.01, 119.02 AND 119.03; TO REPEAL CONFLICTING ORDINANCES PREVIOUSLY ENACTED; TO PROVIDE FOR SEVERABILITY AND AN EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

SECTION 1. Section 119.01 of the La Vista Municipal Code is amended to read as follows:

§ 119.01 FINDINGS AND INTENT

The City Council hereby declares that it is the policy of the City to affirm the scientific evidence that the use of tobacco products, electronic nicotine delivery systems, and alternative nicotine products is causally connected to many diseases and is dangerous to human health. Placing tobacco products and systems out of the reach of children and teenagers will reduce the likelihood that children and teenagers will use such products and systems.

(Ord. 999, passed 7-18-06; Am. Ord. 1446, passed 2-1-22)

SECTION 2. Section 119.02 of the La Vista Municipal Code is amended to read as follows:

§ 119.02 DEFINITIONS.

For purposes of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ALTERNATE NICOTINE PRODUCT. Any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. Alternative nicotine product does not include any electronic nicotine delivery system, cigarette, cigar, or other tobacco product, or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act.

ELECTRONIC NICOTINE DELIVERY SYSTEM. Any product or device containing nicotine, tobacco, or tobacco derivatives that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, to simulate smoking by delivering the nicotine, tobacco, or tobacco derivatives in vapor, fog, mist, gas, or aerosol form to a person inhaling from the product or device. Electronic nicotine delivery system includes, but is not limited to, the following:

(1) Any substance containing nicotine, tobacco, or tobacco derivatives, whether sold separately or sold in combination with a product or device that is intended to deliver to a person nicotine, tobacco, or tobacco derivatives in vapor, for, mist, gas, or aerosol form;

(2) Any product or device marketed, manufactured, distributed, or sold as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, or similar products, names, descriptors, or devices; and

(3) Any component, part, or accessory of such a product or device that is used during operation of the product or device when sold in combination with any substance containing nicotine, tobacco, or tobacco derivatives.

Electronic nicotine delivery system does not include the following:

(1) An alternative nicotine product, cigarette, cigar, or other tobacco product, or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act; or

(2) Any component, part or accessory of such a product or device that is used during operation of the product or device when not sold in combination with any substance containing nicotine, tobacco, or tobacco deliveries.

PLACE OF BUSINESS. A place where tobacco products are sold at retail, including vending machines.

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RESPONSIBLE PERSON. Any person, firm, association, company, partnership, or corporation or agent or employee of same who operates a store, stand, booth, concession or other place at which tobacco sales are made to purchasers. **RESPONSIBLE PERSON** as defined and applied herein must be an individual 18 years or older.

TOBACCO PRODUCTS. Any product containing nicotine that in whole or in part is intended to be burned, heated, chewed or otherwise ingested or absorbed into the body, including without limitation:

- (1) Cigarettes,
- (2) Cigars,
- (3) Cheroots,
- (4) Stogies,
- (5) Periques,
- (6) Granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco,
- (7) Snuff, snuff flour, Cavendish, plus and twist tobacco, fine cut and other chewing tobacco,
- (8) Shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco, and
- (9) Anything containing tobacco or any other kinds and forms to tobacco prepared in such manner as to be suitable for either chewing, smoking in a pipe, chewing and smoking, or inhaling and snorting through the nose.

VENDOR-ASSISTED ACCESS. Access to tobacco or tobacco products only with the direct assistance of the vendor or a vendor employee or agent, so that customers do not have direct access to take possession of tobacco or tobacco products without direct assistance from the vendor or a vendor employee or agent.

VENDING MACHINE. Any device or machine requiring the deposit of money or other things of value, including any such device or machine activated or operated by the vendor or by an employee or agent of the vendor.

(Ord. 999, passed 7-18-06; Am. Ord. 1446, passed 2-1-22)

SECTION 3. Section 119.03 of the La Vista Municipal Code is amended to read as follows:

§ 119.03 CERTAIN FORMS OF DISTRIBUTION PROHIBITED.

(A) It shall be unlawful to sell alternative nicotine products, cigarettes, electronic nicotine delivery systems or other tobacco products in any form except original factory-wrapped packages. The sale of single cigarettes is specifically prohibited.

(B) It shall be unlawful for any person or organization to give away, hand out, or otherwise distribute free samples of alternative nicotine products, cigarettes, electronic nicotine delivery systems or other tobacco products, or coupons that can be redeemed for free samples of such products or systems, on public property or property that is open to the general public within the City's jurisdiction.

(C) It shall be unlawful to commingle tobacco products, alternative nicotine products, or electronic nicotine delivery systems with any other product for sale from a single vending machine.

(D) It shall be unlawful for any person to:

(1) Sell, permit to be sold, or offer for sale tobacco or tobacco products, alternative nicotine products, or electronic nicotine delivery systems by means other than vendor-assisted access, or

(2) Display tobacco products, alternative nicotine products, or electronic nicotine delivery systems in a manner allowing customers access to such products or systems without vendor assistance. The requirements of this subsection (D) shall not apply to a separate tobacco specialty store or cigar shop in which no one under the age of 21 years is allowed to enter (with the limited exception provided in Section 133.05) and which bears a sign to that effect.

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(E) Cigarettes, other tobacco products, electronic nicotine delivery systems, or alternative nicotine products may be dispensed from a vending machine or similar device when such machine or device is located in an area, office, business, plant, or factory which is not open to the general public or on the licensed premises of any establishment having a license issued under the Nebraska Liquor Control Act for the sale of alcoholic liquor for consumption on the premises when such machine or device is located in the same room in which the alcoholic liquor is dispensed.

(Ord. 999, passed 7-18-06; Am. Ord. 1446, passed 2-1-22)

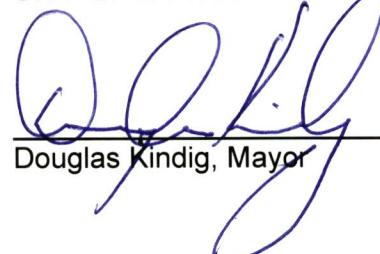
SECTION 4. Repeal of Conflicting Ordinances. All ordinances and parts of ordinances as previously enacted that are in conflict with this Ordinance or any part hereof are hereby repealed.

SECTION 5. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional, unenforceable or invalid, such unconstitutionality, unenforceability or invalidity shall not affect the constitutionality, enforceability or validity of the remaining portions of this Ordinance. The Mayor and City Council of the City of La Vista hereby declare that they would have passed this Ordinance and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional, unenforceable or invalid.

SECTION 6. Effective Date. This Ordinance shall be in full force and effect from and after passage, approval and publication in pamphlet form as provided by law.

PASSED AND APPROVED THIS 1ST DAY OF FEBRUARY 2022.

CITY OF LA VISTA



Douglas Kindig, Mayor

ATTEST:



Pamela A. Buethe

Pamela A. Buethe, MMC

City Clerk