ORDINANCE NUMBER 620

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTONWOOD, YAVAPAI COUNTY, ARIZONA, AMENDING TITLE 9, PUBLIC PEACE, MORALS, AND WELFARE, OF THE MUNICIPAL CODE BY ADDING A NEW CHAPTER 9.12.040, PROHIBITING THE POSSESSION, USE AND/OR SALE OF TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR PRODUCTS BY OR TO PERSONS UNDER THE AGE OF 21.

RECITALS AND FINDINGS

The City Council of the City of Cottonwood hereby recognizes and finds as follows:

1. That the use of tobacco, nicotine and vapor products has devastating health and economic consequences.

2. That the use of tobacco and nicotine is the foremost preventable cause of premature death in America, causes half a million deaths annually and has been responsible for 20.8 million premature deaths in the U.S. over the past 50 years since the first Surgeon General's report on smoking in 1964.

3. That tobacco and nicotine use leads to more than 300 billion dollars in health care costs and lost productivity each year.

4. That an estimated 5.6 million youth aged 0 to 17 are projected to die prematurely from a tobacco-related illness if prevalence rates do not change.

5. That national data show that 95 percent of adult smokers begin smoking before they turn 21, and that the ages of 18 to 21 are a critical period when many users of tobacco and nicotine move from experimentation to regular, daily use.

6. That young minds are particularly susceptible to the addictive properties of tobacco and nicotine, and that those who start smoking by the age of 18 are almost twice as likely to become lifetime users as those who start after they turn 21.

7. That electronic smoking device use among minors has recently tripled.

8. That in 2015, the Institute of Medicine concluded that raising the minimum legal sales age for tobacco products nationwide would reduce tobacco initiation, particularly among adolescents aged 15 to 17, improve health across the lifespan, and save lives; and that raising the minimum legal sales age for tobacco products nationwide to 21 would, over time, lead to a 12 percent decrease in smoking prevalence.

10. That the Institute of Medicine predicts that raising the minimum legal sales age for tobacco products nationwide to 21 would result in 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost for those born between 2000 and 2019; and would also result in near-immediate reductions in preterm birth, low birth weight, and sudden infant death syndrome.

11. That a growing number of state and local jurisdictions have enacted laws to restrict access to tobacco products, alternative nicotine products and/or vapor products by persons under the age of twenty-one.

IN LIGHT OF THE FOREGOING FINDINGS AND RECITALS, AND TO PROTECT THE PUBLIC HEALTH AND WELFARE, IT IS HEREBY ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, THAT TITLE 9, PUBLIC PEACE, MORALS, AND WELFARE, OF THE MUNICIPAL CODE OF THE CITY OF COTTONWOOD, IS HEREBY AMENDED AS FOLLOWS:

Section 1: That a new Chapter 9.12.040, PROHIBITING THE SALE, POSSESSION, AND USE OF TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR PRODUCTS TO OR BY PERSONS UNDER THE AGE OF 21, is hereby added to Title 9, Public Peace, Morals, and Welfare, as follows:

9.12.040 PROHIBITING THE SALE, POSSESSION AND USE OF TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS, AND VAPOR PRODUCTS TO OR BY PERSONS UNDER THE AGE OF TWENTY-ONE.

A. DEFINITIONS

For the purposes of this Chapter:

1. "ALTERNATIVE NICOTINE PRODUCT" includes any non-combustible 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 vapor product, tobacco product or any product regulated as a drug or

device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

2. "TOBACCO PRODUCT" includes cigarettes, cigars, pipe tobacco and other tobacco products suitable for smoking, as well as smokeless tobacco products, including but not limited to tobacco snuff.

3. "RETAILER" shall mean any person, firm or corporation engaged in the business of selling tobacco products, alternative nicotine products, or vapor products to any individual customer or consumer.

3. "VAPOR PRODUCT" includes any non-combustible product with or without nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical or mechanical means, regardless of shape or size, which can be used to produce vapor with or without nicotine in a solution or other form. Vapor product includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of nicotine in a liquid solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.

B. Prohibition on the Purchase, Possession or Use of Tobacco Products, Alternative Nicotine Products, or Vapor Products by Persons Under the Age of Twenty-One. No person under the age of twenty-one (21) may purchase, possess, or use any tobacco product, alternative nicotine product, or vapor product within the City limits of Cottonwood. It shall be a defense to any prosecution or liability under this subsection that a person under the age of twenty-one (21) purchased or obtained a tobacco product, alternative nicotine product, or vapor product in a jurisdiction in which doing so was lawful, and that such person did not have actual knowledge that it was unlawful to possess or use such products within the City limits of Cottonwood. No tobacco product, alternative nicotine product or vapor product shall be confiscated from any person under the age of twenty-one (21) who establishes by credible evidence that he or she purchased or obtained the tobacco product, alternative nicotine product, or vapor product in a jurisdiction in which doing so was lawful.

C. Prohibition on the Sale of Tobacco Products, Alternative Nicotine Products, or Vapor Products to Persons Under the Age of Twenty-One. No retailer or other person shall sell, distribute or otherwise provide any tobacco product, alternative nicotine product, or vapor product to a person who is under the age of twenty-one (21).

D. Signage Required. No retailer shall sell or permit the sale of any tobacco product, alternative nicotine product, or vapor product in the City unless a clearly visible notice is posted at the location where such products are available for purchase,

which legibly states in letters at least one-half inch high that "No person under the age of 21 may purchase any tobacco product, alternative nicotine product, or vapor product."

E. Age Verification. Before any retailer or other person may sell, distribute or otherwise provide any tobacco product, alternative nicotine product, or vapor product to a person who appears to be under the age of thirty (30), the retailer or other person shall verify that the recipient is at least 21 years of age by examining the recipient's government-issued photographic identification. It shall be an affirmative defense to liability under this subsection for a person to have reasonably relied on proof of age as described herein.

F. Exception. Nothing in this Chapter shall be construed to prohibit a person under the age of 21 from handling tobacco products in the course of lawful employment.

G. Classification and Penalties.

1. Violation of any provision of this Chapter shall be classified as a civil offense, and shall be heard in the Cottonwood Municipal Court, using the same procedures as are used for the adjudication of civil traffic offenses.

2. A person under the age of twenty-one (21) who violates Section B. of this Chapter for the first time shall be given the opportunity to participate in a tobacco education class approved by the court, successful completion of which shall result in dismissal of the charge. A person under the age of twenty-one (21) who violates Section B. of this Chapter and refuses or fails to participate in a tobacco education class approved by the court within ninety (90) days, or any person under the age of twenty-one (21) who violates Section B. of this Chapter for a second or subsequent time and/or after completing a court-approved tobacco education class shall be subject to a fine not exceeding one-hundred dollars ($100.00), plus applicable fees, fines, and assessments, or community service, or both.

3. A retailer or other person over the age of twenty-one (21) who violates any provision of this Chapter shall be subject to a fine not to exceed two-hundred and fifty dollars ($250.00) plus applicable fees, fines, and assessments for the first offense; and five-hundred dollars ($500.00) plus applicable fees, fines, and assessments for each subsequent offense.

Section 2: If any section, subsection, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions hereof.

PASSED AND ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA. THIS 3RD DAY OF MAY 2016.

Diane Joens, Mayor

ATTEST:

Marianne Jiménez, City Clerk

APPROVED AS TO FORM:

Steve Horton, Esq.
City Attorney

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