

ORDINANCE NO. 19-18

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
CASTLE PINES, COLORADO, ADOPTING A NEW ARTICLE 8 OF
CHAPTER 6 OF THE CASTLE PINES MUNICIPAL CODE CONCERNING
TOBACCO RETAILER LICENSING**

WHEREAS, the City of Castle Pines (the “City”) is a home rule municipality authorized to exercise its police powers to promote and protect the public health, safety and welfare; and

WHEREAS, the City currently does not require retailers who sell tobacco and nicotine products to obtain a license for the sale of such products within the City; and

WHEREAS, although smoking rates have declined in the United States, in Colorado, like most other states, smoking is the number one cause of preventable deaths; and

WHEREAS, according to information from the Tri-County Health Department, most tobacco users begin using tobacco before they are legally old enough to purchase these products; and

WHEREAS, national data shows that about ninety-five percent (95%) of adult smokers begin smoking before they turn twenty-one (21), but less than half of adult smokers become regular smokers before the age of eighteen (18); and

WHEREAS, therefore, the 18 to 21 age range is a time when many smokers transition to regular use of cigarettes, and one national survey shows that the prevalence of smoking among 18- to 20-year-olds is more than double that of 16- to 17-year-olds; and

WHEREAS, the Centers for Disease Control (“CDC”) recommendations for best practices to effectively limit youth access to tobacco and prevent future regular use of cigarettes include stronger local laws directed at retailers, active enforcement of retailer sales laws, and retailer education with reinforcement; and

WHEREAS, the City Council desires to implement the type of community prevention program recommended by the Tri-County Health Department and the CDC to reduce youth access to tobacco and help prevent kids from becoming smokers; and

WHEREAS, the City Council finds that this Ordinance furthers the promotion of public health, safety and welfare.

THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO, ORDAINS:

Section 1. **Addition of New Article 8.** Chapter 6 of the Municipal Code, titled “Business Licenses and Regulations,” is hereby amended to add a new Article 8 as follows:

ARTICLE 8 –Tobacco Retailer Licensing

Sec. 6-8-10. Title and Scope.

This Article shall be known and cited as the *Tobacco Retailer Licensing Ordinance*. This Article shall apply to all persons and businesses who sell cigarettes and tobacco products at retail within the City. The provisions of Article 1 of this Chapter shall apply to tobacco retailer licenses except as may be otherwise specified in this Article.

Sec. 6-8-20. Definitions.

The following definitions shall apply throughout this Article:

Accessory means any product that is intended or reasonably expected to be used with or for the human consumption of a tobacco product; does not contain tobacco and is not made or derived from tobacco; and meets either of the following: (1) is not intended or reasonably expected to affect or alter the performance, composition, constituents, or characteristics of a tobacco product; or (2) is intended or reasonably expected to affect or maintain the performance, composition, constituents, or characteristics of a tobacco product but (a) solely controls moisture and/or temperature of a stored tobacco product; or (b) solely provides an external heat source to initiate but not maintain combustion of a tobacco product. Accessory includes, but is not limited to, carrying cases, lanyards and holsters.

Cigarette means any product that contains tobacco or nicotine, that is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

- (a) Any roll of tobacco wrapped in paper or in any substance not containing tobacco; or
- (b) Tobacco in any form that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to, or purchased by consumers as a cigarette; or
- (c) Roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (a) above.
- (d) The term includes all "roll-your-own," i.e., any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

Component or part means any software or assembly of materials intended or reasonably expected: (1) to alter or affect the tobacco product's performance, composition, constituents, or characteristics; or (2) to be used with or for the human consumption of a tobacco product or electronic smoking device. Component or part excludes anything that is an accessory, and includes, but is not limited to e-liquids, cartridges, certain batteries, heating coils, programmable software and flavorings for electronic smoking device.

Electronic smoking device means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of

nicotine or any other substance, even if marketed as nicotine-free, through inhalation of vapor from the product. Electronic smoking device includes any refill, cartridge or component part of a product, whether or not marketed or sold separately. Electronic smoking device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.

Legal sales age means twenty-one (21) years old.

Licensee means the owner or holder of a tobacco retailer license.

License means the tobacco retailer license.

License officer has the same meaning as set forth in Section 6-1-20 of this Code.

Licensed premises means any location where tobacco products and/or tobacco paraphernalia are authorized to be sold or distributed to a consumer including, but not limited to, the grounds occupied by a licensee, and any store, outlet, location, vending machine or structure where tobacco products and/or tobacco paraphernalia are sold, as designated in the approved license application.

Mobile retailer means any tobacco retailer who sells tobacco products and/or tobacco paraphernalia at a mobile or non-fixed location. A mobile retailer includes but is not limited to any person or business who engages in tobacco product retailing on foot or from a vehicle.

Self-service display means the open display or storage of tobacco products or tobacco paraphernalia in a manner that is physically accessible in any way to the general public without assistance from the licensee or an employee of the licensee through a direct, person-to-person transfer between the recipient and the licensee or an employee of the licensee. A vending machine is a form of self-service display.

Tobacco paraphernalia means any item designed for the consumption, use, or preparation of tobacco products.

Tobacco product means and includes any product that is made or derived from tobacco or that contains nicotine or synthetic nicotine that is intended for human consumption or is likely to be consumed whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means including, but not limited to a cigarette, cigar, pipe tobacco, chewing tobacco, snuff or snus. Tobacco product also means any electronic smoking device, tobacco paraphernalia, and any component or part used in the consumption of a tobacco product(s) such as filters, rolling papers, pipes and liquids used in electronic smoking devices whether or not said product contains nicotine. Tobacco product does not include drugs, devices or combination products authorized for sale as a tobacco cessation product by the United States Food and Drug Administration as the terms are defined in the Federal Food, Drug and Cosmetic Act.

Tobacco retail location or *retail location* means any premises where tobacco products or tobacco paraphernalia are sold or distributed to a consumer including, but not limited to, a hookah bar, lounge or cafe, any grounds occupied by a tobacco retailer, including a mobile retailer, any store, outlet, location, vending machine or structure where tobacco products are sold.

Tobacco retailer means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco or nicotine products, or tobacco paraphernalia. "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.

Tobacco product retailing means the selling, offering for sale, or exchanging for any form of consideration a tobacco product.

Vending machine shall mean any mechanical, electrical, or electronic self-service device which, upon insertion of money, tokens, or any other form of payment, dispenses a product.

Youth-centered facility means a school, park, playground, or public recreation center.

Sec. 6-8-30. License requirements and prohibitions.

- (a) It shall be unlawful for any tobacco retailer to sell tobacco products or engage in tobacco product retailing without a valid license obtained from the City pursuant to this Article.
- (b) No license shall be issued to any person who is under the legal sales age.
- (c) No license shall be issued to a mobile retailer. Only tobacco retailers with a fixed business location are eligible for a license.
- (d) Each license shall be prominently displayed in a publicly visible location at the licensed premises.
- (e) No tobacco retailer may sell tobacco products to any person who is under the legal sales age. The legal sales age for purchasing tobacco products shall be displayed in a clearly visible location at the licensed premises.
- (f) Each license is separate and distinct and specific to a designated location. A tobacco retail location may have only one (1) active license at a time. All tobacco retailers must obtain a license for each location where tobacco products are offered for sale and must prominently display the license in a publicly visible location at the license premises.
- (g) No license shall be issued to a location that is within 500 feet of a youth-centered facility, as determined by the license officer. This restriction shall not apply to a retail location within 500 feet of a youth-centered facility that existed as of the effective date of this Article.

Sec. 6-8-40. Operational requirements for licensed premises.

- (a) No employee of the tobacco retailer who is under the legal sales age shall sell, stock, retrieve, or otherwise handle tobacco products or tobacco paraphernalia.
- (b) Licensees are prohibited from making tobacco products available through self-service displays, including vending machines, at the licensed premises. Licensees shall stock and display all tobacco products in a manner so as to make all such products inaccessible to customers without the assistance of a retail clerk, thereby requiring a direct face-to-face

exchange of the tobacco products from an employee of the business to the customer and requiring all tobacco products to be in the control of the licensee or licensee's employees who are the legal sales age or older until the customer's age has been verified and the customer has purchased the tobacco products.

- (c) No licensee or employee of the licensee shall sell tobacco products without first examining the purchaser's government-issued identification to confirm the purchaser is not under the legal sales age.

Sec. 6-8-50. License application requirements.

- (a) All applicants for a license shall file a completed application for such license with the City Clerk on forms provided and approved by the City.
- (b) The completed application shall be accompanied by payment in full of all applicable fees and shall contain the following information:

(1) If the applicant is:

(A) An individual, the individual shall state his or her legal name and any aliases and submit satisfactory proof that he or she is the legal sales age or older.

(B) A business entity, the applicant shall:

1. State the entity's complete name; and
2. State the names of all its partners, managers, or officers and directors, as applicable;
3. Whether the business entity is in good standing under the statutes of Colorado or is authorized to do business in Colorado;
4. Submit satisfactory proof that each partner, manager, officer or director, as applicable, is the legal sales age or older; and
5. Submit the name of any registered agent and the agent's address for service of process.

(2) State whether the applicant or any other individual listed pursuant to Subsection (1) above has had a previous license under this Article or from another jurisdiction denied, suspended, revoked or declared a public nuisance, including the name and location of the tobacco retailer for which the license was denied, suspended, revoked or declared a public nuisance, as well as the date of the denial, suspension, revocation or declaration as a public nuisance.

(3) Additionally, state whether the applicant or any other individual listed pursuant to Subsection (1) above has been a partner in a partnership, officer or director of a corporation or manager of a limited liability company of a tobacco retailer whose

license has previously been denied, suspended, revoked or declared a public nuisance, including the name and location of the tobacco retailer for which the license was denied, suspended, revoked or declared a public nuisance, as well as the date of the denial, suspension, revocation or declaration as a public nuisance.

- (4) State whether the applicant or any other individual listed pursuant to Subsection (1) above holds any other licenses under this Article or other similar tobacco retailer regulation from another jurisdiction and, if so, the names and locations of such other permitted businesses.
- (5) State the location of the proposed tobacco retailer, including a legal description of the property, street address and telephone number, if any.
- (6) Provide proof of the applicant's right to possession of the premises wherein the tobacco retailer will be located.
- (7) State the applicant's mailing address, e-mail address if available, and residential address.
- (8) State the applicant's social security number or federally issued tax identification number.
- (9) Provide evidence prepared by the Community Development Department that the proposed location of the tobacco retailer complies or fails to comply with all applicable requirements of this Article. Said evidence shall be supplied by the Community Development Department within ten (10) days of the applicant requesting such information.
- (10) Provide a verified affidavit of the applicant that the proposed tobacco retailer and its location comply with and conform to all requirements of this Article.

Sec. 6-8-60. License issuance.

- (a) Upon receipt of a completed application that meets all requirements of Section 6-8-50 of this Article, the license officer shall review and act on a license application within thirty (30) days. Such review period may be extended for good cause, including but not limited to a request by the license officer for more information from the applicant. The license officer may approve an application only if it meets all of the following criteria:
 - (1) The information presented is complete, accurate and true;
 - (2) The applicant seeks authorization for a license at a location authorized by this Article;
 - (3) The applicant seeks a license for a location that is appropriately zoned for the proposed use;

- (4) The applicant did not have a license, issued pursuant to this Article or a similar license issued in another jurisdiction, revoked in the last three years;
 - (5) The applicant is qualified to hold a license issued pursuant to the requirements of this Article;
 - (6) The applicant or location proposed to be licensed is in compliance with all applicable local, state, or federal laws;
 - (7) The applicant is not indebted to or obligated in any manner to the City for unpaid taxes, liens or other monies; and
 - (8) The applicant has paid all applicable fees in full.
- (b) The license officer shall deny an application that fails to meet any one or more of the criteria set forth in this Section or Section 6-1-80 of this Code. The license officer or his or her designee may attempt to work with the applicant to ensure that all of the above criteria are met before issuing a denial.
- (c) If the license officer denies an application for a license, the license officer shall notify the applicant in writing by mail and, if an e-mail address is provided by applicant, electronic mail to the appropriate address listed on the application. The written notice shall set forth the reason for denial. Notice shall be deemed to have been given upon mailing.
- (d) When issuing a license, the license officer may impose reasonable conditions upon issuance of the license to ensure that the requirements of this Article are met.
- (e) It is the responsibility of each applicant or licensee to be informed regarding all laws applicable to tobacco product retailing, including those laws affecting the issuance of said license. No applicant or licensee may rely on the issuance of a license as a determination by the City that the applicant or licensee has complied with all applicable tobacco product retailing laws.

Sec. 6-8-70. License fee, term, renewal, expiration and transferability.

- (a) The application fee, renewal fee, and any other fees for the issuance of a license or license renewal pursuant to this Article shall be set and may be changed from time to time by resolution of the City Council and shall be included in the City's fee schedule. The fees shall be calculated to recover the direct and indirect costs of administration and enforcement of this Article, including but not limited to license issuance, retailer education and training, inspections, compliance checks, community outreach and education, and prosecution of violations. Such fees shall be separately accounted for and used to defray the costs of the local licensing program. Fees are nonrefundable except as may be required by law.
- (b) All licenses issued pursuant to this Article shall be valid for no longer than one (1) year. The term of each license shall be from the date of issuance until December 31st of the year issued.

- (c) A licensee may renew a license by submitting a renewal application on forms issued and approved by the City and paying the renewal fee by the December 1st prior to the expiration date of the license. If December 1st falls on a weekend or other non-business day of the City, renewals may be timely submitted the following business day.
- (d) The license officer shall not renew a license if the licensee does not meet the requirements of this Article or any other applicable law, ordinance or regulation at the time of renewal.
- (e) A license that is not timely renewed shall expire at the end of its term. The failure to submit a timely and complete renewal application requires licensee to submit a new application for a license. No licensee shall sell any tobacco products or tobacco paraphernalia after the license expiration date unless and until a new license is issued pursuant to the requirements of this Article.
- (f) Licenses are non-transferable and cannot be transferred from one person, entity or location to another. When a license has been issued to a husband and wife or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new license for the remainder of the term of that license. All rights and privileges granted under the original license shall continue in full force and effect as to such survivors for the balance of the term of the license.

Sec. 6-8-80. Compliance monitoring

- (a) The City shall monitor compliance with this Article through the Douglas County Sheriff's Office or other authorized enforcement officer, and may inspect any tobacco retailer for compliance with this Article and any other applicable laws.
- (b) The City shall have discretion to consider previous compliance check history or prior violations of a licensee in determining how frequently to conduct compliance checks of the licensee.

Sec. 6-8-90. Suspension or revocation of license.

- (a) The City shall commence any suspension or revocation proceeding by setting a public hearing on the issue in accordance with Section 6-1-90 and Section 6-1-130 of this Code.
- (b) In addition to any grounds for suspension or revocation of a license set forth in Article 1 of this Chapter, the following shall be grounds for suspension or revocation of a license:
 - (1) A violation by licensee or licensee's officers, agents or employees of any provisions of this Article or any local, state, or federal laws relating to the sale of tobacco products;
 - (2) Violations of any conditions imposed by the license officer or City Council in connection with the issuance or renewal of a license;
 - (3) Failure to pay any state or local taxes related to the operation of the business associated with the license;

- (4) Licensee's loss of the right to possession of the licensed premises; or
 - (5) The City discovers that any statement contained in the original or renewal application for the license was fraudulent, false, or a misrepresentation of a material fact.
- (c) Any licensee whose license is suspended or revoked shall not be entitled to any refund of license fees paid by the licensee.
- (d) A tobacco retailer whose license has been suspended or revoked shall not display:
- (1) Tobacco products or tobacco paraphernalia in public view during the timeframe in which the license is suspended or revoked; and
 - (2) Advertisements relating to tobacco products or tobacco paraphernalia that promote the sale or distribution of such products from the location that could lead a reasonable person to believe that such products can be obtained from that location.

Sec. 6-8-100. Appeals.

- (a) An applicant has the right to appeal the license officer's denial of an application for a license or license renewal. Such appeals shall be subject to the requirements and procedures of Section 6-1-90.
- (f) Any appeal of a decision of the City affirming the denial of a license application, or suspending or revoking a license as provided by Section 6-1-30 of this Code, shall be governed by Rule 106(a) of the Colorado Rules of Civil Procedure.

Sec. 6-8-110. Violations, penalties, and fines.

- (a) In addition to any other penalty authorized by law, and if the City Council determines based on a preponderance of the evidence presented at a properly noticed public hearing for the suspension or revocation of a license, that the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of this Article, or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law relating to the sale of tobacco to minors including but not limited to C.R.S. §§ 18-13-121 and 44-7-103, the City Council may consider the following non-binding guidelines in determining the sanctions to be imposed upon a licensee as follows:
 - (1) One violation within thirty-six (36) months: a fine of five hundred dollars (\$500) and suspension of the license for three (3) to seven (7) days.
 - (2) Two violations within thirty-six (36) months: a fine of one thousand dollars (\$1000) and minimum twenty (20) to thirty (30) days suspension of the license.
 - (3) Three (3) violations within thirty-six (36) months: revocation of license.

- (b) The actual sanction imposed upon a licensee for any violation may vary from the above-stated guidelines when warranted by the specific facts and circumstances of the case.
- (c) It shall be unlawful for any tobacco retailer to sell a tobacco product or tobacco paraphernalia with a suspended or revoked license.
- (d) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Article shall cause the offender to be subject to the penalties set forth in this Article or in the general penalties section of this Code, as appropriate.
- (e) A licensee found to be in violation of this Article by a court of competent jurisdiction shall pay the City's attorney fees in bringing any legal action to enforce this Article.
- (f) Any violation of this Article shall constitute a nuisance subject to the abatement provisions of Chapter 7 of this Code.
- (g) The remedies provided by this Article are cumulative and in addition to any other remedies available at law or in equity. In addition to the remedies provided by this Article or by other law, any violation of this Article may be remedied by a civil action brought by the City Attorney, including but not limited to an action for injunctive relief, in a court of competent jurisdiction.

Sec. 6-8-120. No rights in license.

Every license issued under this Article confers only a limited and conditional privilege subject to the requirements, conditions, limitations and qualifications of this Article. The license does not confer a property right of any kind. The license and privilege created by the license may be further regulated, limited or completely extinguished at the discretion of City Council or the electorate of the City, as provided in this Article, without any compensation to the licensee. Nothing contained in this Article grants to any licensee any vested right to continue operating under the provisions of this Article as they existed at the time the license was approved or issued, and every license shall be subject to any ordinance or prohibition adopted after the license was approved or issued.

Sec. 6-8-130. Effective date.

This Article shall become effective as of January 1, 2020 and shall be subject to enforcement on and after that date.

Section 2. Severability. If any portion of this Ordinance is found to be void or ineffective, it shall be deemed severed from this Ordinance and the remaining provisions shall remain valid and in full force and effect, in accordance with Section 6.8 of the Charter.

Section 3. No Existing Violation Affected. Nothing in this Ordinance shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any ordinance hereby repealed or amended by this Ordinance, or any just or legal right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 4. Repeal of Previous Ordinances. Any and all ordinances or codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such ordinance or code or part thereof shall not revive any other section or part of any ordinance or code heretofore repealed or superseded and this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this Ordinance.

Section 5. Codification Amendments. The codifier of the City's Municipal Code is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Castle Pines Municipal Code.

Section 6. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Castle Pines, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 7. Publication and Effective Date. The City Clerk is hereby directed to cause publication of this Ordinance in accordance with Section 6.5 of the Charter. This Ordinance shall be effective thirty (30) days after final publication on the City's official website and posted at the City Clerk's office pursuant to Section 1-3-40 of the Municipal Code.

INTRODUCED, READ, AND PASSED ON FIRST READING, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO, THE 12TH DAY OF NOVEMBER, 2019.

READ, PASSED, AND ADOPTED ON SECOND READING, FOLLOWING A PUBLIC HEARING, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO, the 10th day of December, 2019.



ATTEST:

DocuSigned by:
Tobi Basile
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Tobi Basile, CMC, City Clerk

DocuSigned by:
Tera Stave Radloff
6E0C8EB279DC479...
Tera Stave Radloff, Mayor


Approved as to form:

DocuSigned by:
Linda C. Michow
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Linda C. Michow, City Attorney

CERTIFICATION OF PUBLICATION

I hereby attest and certify that the within and foregoing Ordinance was introduced and read on first reading on November 12, 2019; published by title only in the *Douglas County News-Press*, together with the statement that “[t]he complete text of the ordinance is available through the City Clerk’s office and on the City’s official website with second reading and public hearing to be held on December 10, 2019”; and finally passed and adopted by the City Council on December 10, 2019, following a duly noticed public hearing and published on the City’s official website and posted at the City Clerk’s office on November 13, 2019.

ATTEST:

DocuSigned by:

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Tobi Basile, CMC, City Clerk