

**TOWN OF KEYSTONE
ORDINANCE NO. 2024-O-04**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF KEYSTONE,
COLORADO, REGULATING THE LICENSING OF THE DISTRIBUTION AND
SALE OF TOBACCO PRODUCTS**

WHEREAS, the Town of Keystone ("Town" or "Keystone") is a home rule municipal corporation created pursuant to Article XX of the Colorado Constitution; and

WHEREAS, Smoking rates in the U.S. have declined substantially since the Surgeon General's 1964 report, from 42 percent to now about 18 percent; however, it remains one of the biggest public health problems in the United States as almost 500,000 Americans still die prematurely each year from diseases related to cigarette smoking. This makes up 85% of deaths from lung cancer. In Colorado, like most other states, it is the number one cause of preventable death, and accounts for 5, 100 deaths a year; and

WHEREAS, 90% of adult smokers started smoking before the age of 18 and each day more than 3,000 adolescents in the U.S. try their first cigarette; and

WHEREAS, youth use of e-cigarettes and similar products is associated with future cigarette use; and

WHEREAS, since 2014, after decades of effective anti-smoking campaigns and decreasing smoking rates in the U.S., there has been a surprising upturn in youth tobacco use; and

WHEREAS, over 225 U.S. localities and the states of California and Hawaii have enacted into law regulations prohibiting the sale of tobacco products to individuals under the age of 21 and research has shown such regulations are effective in decreasing high school tobacco use by up to 50%; and

WHEREAS, research has shown that teens purchase cigarettes from their peers and that 90% of the "social sources" (friends and family) of tobacco for the 12-18 year olds are 18-21 year olds. It has also been shown that youth typically do not make the effort to travel to neighboring localities if the age has increased to 21 in their city; and

WHEREAS, Colorado law, pursuant to C.R.S. § 29-30-101, provides that home rule municipalities may regulate the sale of cigarettes, tobacco products, or nicotine products to minors; and

WHEREAS, the Town Council finds that this ordinance regulating the distribution and sale of tobacco products furthers and is necessary for the promotion of public health, safety, and welfare.

**THE TOWN COUNCIL OF THE TOWN OF KEYSTONE, COLORADO,
ORDAINS:**

Section 1. The foregoing recitals are hereby affirmed and incorporated herein by this reference as findings of the Town Council.

Section 2. Town Council adopts the following regulations, Town Tobacco Code, for the licensing of the distribution and sale of tobacco products.

TOBACCO LICENSE REGULATIONS

A. Purpose and applicability.

- (a) The purpose of these regulations is to establish License requirements for tobacco product retailers and to set forth the requirements for the sale of tobacco products to persons under twenty-one (21) years of age to protect the health, safety and welfare of individuals in Town, to encourage responsible tobacco product retailing and to reduce illegal sales of said products in Keystone, Colorado.
- (b) These regulations apply to tobacco product retailers, as defined herein.

B. Definitions.

The following words and phrases, as used in these regulations, shall have the following meanings:

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:

- (1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

- (2) 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
- (3) 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 (1) above.
- (4) 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, 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 intended for human consumption that can be used by an individual to simulate smoking in the delivery of nicotine or any other substance, even if marketed as nicotine-free, through inhalation 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 or for other medically approved or certified purposes.

Hearing Officer means the person appointed by the Town Manager.

Licensee means the owner or holder of a Tobacco Product Retailer License.

License refers to the tobacco product retailer license.

Licensing administrator means the person(s) within the Town government designated with responsibilities by the Town Manager for license issuance, renewal and collection of fees.

Minimum legal sales age means twenty-one (21) years of age or older.

Mobile vending means any sales other than at a fixed location.

Person means natural person, a joint venture, joint-stock company, partnership, association, firm, club, company, corporation, business, trust or organization, or the manager, lessee, agent, servant, officer or employee of any of them.

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. A vending machine is a form of self-service display.

Tobacco product means:

- (1) Any product which contains, is made or derived from tobacco or used to deliver nicotine, synthetic 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 cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, bidis, snus, nicotine product, mints, hand gels; and
- (2) An electronic smoking device;
- (3) Notwithstanding any provision of subsections (1) and (2) above 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 "tobacco product" does not include:
 - (i) Any product that contains marijuana; and
 - (ii) Any product made from or derived from tobacco and approved by the Food and Drug Administration (FDA) for use in connection with cessation of smoking.

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

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

Tobacco retailing shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco products 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.

Tobacco paraphernalia means any item designed for or reasonably expected to be used for the consumption, use or preparation of tobacco products.

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 product.

C. Minimum legal sales age.

Tobacco products shall not be sold to any person younger than the minimum legal sales age.

D. License requirements and prohibitions.

(a) Tobacco product retailer license required.

(1) It shall be unlawful for any person to act as a tobacco product retailer in the Town unless he or she has obtained a license and maintains the same in full force and effect pursuant to these regulations for each location where tobacco product retailing occurs.

(2) No license shall be issued to authorize tobacco product retailing anywhere other than at a fixed location that is designated in the License application and approved by the Licensing Administrator. Tobacco product retailing by persons on foot, from vehicles or through mobile vending is prohibited.

(3) Tobacco product retailing without a valid license is a violation.

(b) Display of license. Each License shall be prominently displayed in a publicly visible location at the licensed tobacco product retail location.

(c) Display of minimum legal sales age requirements. The requirement of the minimum legal sale age for the purchase of tobacco retail product shall be prominently displayed in the entrance (or other clearly visible location) of the tobacco product retail location.

(d) Other prohibitions.

(1) A tobacco product retail location may only have one active License at one time. Every license is separate and distinct and specific to a designated location. The license cannot be assigned, delegated, sold, inherited or otherwise transferred between persons or transferred to a different location, except as provided in

these regulations. No licensee shall exercise the privileges of any other license or delegate the privileges of its own license.

- (2) A person or entity may not apply for a License for a two-year period after a License has been revoked.
- (3) No license shall be issued to any person under twenty-one (21) years of age.

E. Conditions of the tobacco product retail license.

The following conditions shall apply to the Licensee:

- (a) Minimum age for persons handling tobacco products. No person who is younger than eighteen years of age shall, while employed at a tobacco product retail location, sell, stock, retrieve, or otherwise handle tobacco products or tobacco paraphernalia.
- (b) Prohibition of self-service displays. Licensees shall stock and display all tobacco products and tobacco paraphernalia 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 product or tobacco paraphernalia from an employee of the business to the customer except in an adult-only establishment.
- (c) Requirements of positive identification. No person engaged in tobacco product retailing shall sell or transfer a tobacco product to another person who appears to be under the age of forty (40) years without first examining the government-issued identification of the recipient to confirm that the recipient is at least the minimum legal sales age.
- (d) No licenses within five hundred (500) feet of schools. No Licenses shall be issued to retailers located within five hundred (500) feet from any public or parochial school as determined by the licensing administrator. This restriction shall not apply to an existing retail location within five hundred (500) feet of a school as of the effective date of the ordinance from which these regulations derive.

F. Application procedure.

- (a) An application for a license shall be submitted and signed by an individual authorized by the person or entity making application for the license. It is the responsibility of each applicant and/or Licensee to be informed regarding all laws applicable to tobacco retailing, including those laws affecting the issuance of said license. No applicant and/or licensee may rely on the issuance of a license as a determination by the Town that the proprietor has complied with all applicable tobacco retailing laws.

- (b) All applications shall be submitted on a form supplied by the licensing administrator.
- (c) A licensed tobacco product retailer shall inform the licensing administrator in writing of any change in the information submitted on an application for a license within thirty (30) business days of a change.
- (d) All license applications shall be accompanied by the payment in full of all fees as required.

G. Issuance of a tobacco product license.

Upon the receipt of a completed application for a License as required by these regulations, the licensing administrator shall sign and issue a license within thirty (30) days which period may be extended by the licensing administrator for good cause unless substantial evidence demonstrates that one or more of the following bases for denial exists:

- (a) The information presented in the application is incomplete, inaccurate or false;
- (b) The applicant seeks authorization for a license at a location where these regulations prohibit the issuance of a license;
- (c) The applicant seeks a License for a location that is not appropriately zoned for the use;
- (d) The applicant seeks authorization for a license and the applicant's current license is suspended or revoked;
- (e) The applicant is not qualified to hold the requested license under the provisions of these regulations;
- (f) The applicant and/or retail location is not in compliance with all Town, state or federal laws;
- (g) The applicant is indebted to, or obligated in any manner to the Town for unpaid taxes, liens or other monies;
- (h) The payment of the licensing fee in the full amount chargeable for such license does not accompany such License application; or
- (i) The applicant's previous license issued under this section has been revoked in the past two (2) years.

H. Denial of tobacco product license.

- (a) If the Licensing Administrator denies the issuance of the license, the Licensing Administrator shall notify the applicant in writing by regular mail postage prepaid on the address shown in the application. The notice shall include the grounds for denial. Notice is deemed to have been properly given upon mailing.
- (b) An applicant has the right to appeal the Licensing Administrator's denial of an application to the Hearing Officer that shall be appointed by the Town Manager. Such an appeal shall be initiated by filing a written request with the Licensing Administrator within twenty (20) days of the date of the notice of denial of the issuance of a license.
- (c) The applicant's failure to timely appeal the decision of the Licensing Administrator is a waiver of the applicant's right to contest the denial of the issuance of the license.
- (d) The appeal, including any right to further appeals, shall be conducted and controlled by the provisions of Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The standard of proof at such appeal shall be a preponderance of the evidence and the burden of proof shall be upon the applicant. The licensee's failure to timely appeal the decision is a waiver of the licensee's right to contest the suspension or revocation of the license.

I. License term, renewal and expiration.

- (a) Term. All Licenses issued under this Code shall be for the period of one (1) year from the date of issuance.
- (b) Renewal of license. A licensee shall apply for the renewal of the license and submit the renewal license fee no later than thirty (30) days prior to expiration of the existing term. The Licensing Administrator shall renew the license prior to the end of the term, provided that the renewal application and fee were timely submitted, and the Licensing Administrator is not aware of any fact that would have prevented issuance of the original license or issuance of the renewal.
- (c) Expiration of license. A license that is not timely renewed shall expire at the end of its term. The failure to timely obtain a renewal of a license requires submission of a new application. There shall be no sale of any tobacco products after the license expiration date and before the new License is issued.

J. License non-transferable.

- (a) A license shall not be transferred from one (1) person to another or from one location to another.
- (b) 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.

K. Fee for license.

- (a) The fee to issue or to renew a License shall be pursuant to a Town Council resolution, which may be changed from time to time. The fee shall be calculated so as to recover the direct and indirect costs of administration and enforcement of these regulations, including, for example, issuing a license, administering the License program, retailer education and training, retailer inspection, community outreach and education, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by these regulations. Fees are nonrefundable except as may be required by law.
- (b) The amount of fees charged by the Town pursuant to this Section shall be reviewed and, if necessary, adjusted to reflect the direct and indirect costs incurred by the Town in connection with the adoption, administration and enforcement of these regulations.

L. Compliance monitoring.

- (a) Compliance monitoring of these regulations shall be by the Law enforcement. The Law enforcement 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 with respect to individual licensees.
- (b) The Law enforcement may inspect each tobacco product retailer two (2) times per License term.
- (c) Compliance checks shall be conducted by the Law enforcement, including the use of decoys, so as to allow the Law enforcement to determine, at a minimum, if the tobacco product retailer is conducting business in a manner that complies with laws regulating access to tobacco products. When the Law enforcement deems appropriate, the compliance checks shall determine compliance with other laws applicable to tobacco products.
- (d) All licensed premises must be open to inspection by law enforcement or other authorized Town official during regular business hours. The Town may conduct compliance checks by engaging with persons over the age of fifteen (15) but less than twenty-one (21) years to enter a Licensed premises to attempt to purchase Tobacco Products.
- (e) Prior written consent is required for any minor who participates in a compliance check. Under-aged individuals participating in compliance checks will be supervised by law enforcement or other designated personnel and will not be guilty of illegal

possession or illegal procurement when those items are obtained as a part of the compliance check. The Town shall not enforce any law establishing a minimum age for tobacco product purchases or possession against an individual who otherwise might be in violation of such law because of the individual's age (hereinafter "underage operative") if the potential violation occurs when:

- (1) The underage operative is participating in an inspection supervised by a peace officer, code enforcement official, or the Department designated by the Town to monitor compliance with these regulations;
 - (2) The underage operative is acting as an agent of an individual, Department or group designated by the Town to monitor compliance with these regulations; or
 - (3) The underage operative is participating in an inspection funded in part, either directly or indirectly through subcontracting, by the Summit County health department, Colorado Department of Public Health and Environment or the Colorado Department of Revenue].
- (f) All licensed locations with compliance or inspection violations may be re-checked by the Police Department for compliance within forty-five (45) days of a violation.
- (g) Nothing in this paragraph shall create a right of action in any licensee or other person against the town or its agents.

M. Suspension or revocation of license.

- (a) The following shall be grounds for suspension or revocation of the licensee's license:
- (1) A violation by a licensee or licensee's officers, agents, or employees of any of the provisions of these regulations, or any laws of the United States, the State of Colorado or ordinances of the Town relating to the sale of tobacco products to persons under the minimum legal sales age, or the storage or display of cigarettes or tobacco products.
 - (2) Violations of any conditions imposed by the Licensing Administrator or Hearing Officer in connection with the issuance or renewal of a license.
 - (3) Failure to pay State or local taxes that are related to the operation of the business associated with the license.
 - (4) Loss of right to possession of the licensed premises.
 - (5) Fraud, misrepresentation, or a false statement of material fact contained in the original or renewal license application;

- (b) The Town Manager shall appoint a Hearing Officer to hear all actions relating to the suspension or revocation of licenses pursuant to these regulations. The Hearing Officer shall have the authority to suspend, revoke, or impose remedial sanctions for violations.
- (c) The Licensing Administrator shall commence suspension or revocation proceedings by petitioning the Hearings Officer to issue an order to the licensee to show cause why the licensee's license(s) should not be suspended or revoked. The Hearing Officer shall issue such an order to show cause if the petition demonstrates that probable cause exists to determine that one or more grounds exist pursuant to subsection (a) to suspend or revoke the licensee's license. The order to show cause shall set the matter for a public hearing before the Hearing Officer.
- (d) Notice of the order to show cause order and hearing date shall be mailed to licensee by regular mail, postage prepaid, at the address shown on the license no later than thirty (30) days prior to the hearing date. Notice is deemed to have been properly given upon mailing.
- (e) In determining whether a License should be suspended or revoked, and in determining whether to impose conditions in the event of a suspension, the Hearing Officer shall consider the following factors:
 - (1) The nature and circumstances of the violation;
 - (2) Corrective action, if any taken by the licensee;
 - (3) Prior violations, if any by the licensee;
 - (4) The likelihood of recurrence of the violation;
 - (5) Whether the violation was willful; and
 - (6) Previous sanctions, if any, imposed on the licensee.

N. Penalties and fines.

- (a) Licensees: penalties and fines. In addition to any other penalty authorized by law, and if the Hearing Officer determines based on a preponderance of the evidence, that the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of these regulations, or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law relating to the sale of tobacco products to minors including but not limited to C.R.S. sections 18-13-121 and 44-7-103, the Hearing Officer may consider a fine pursuant to the Town's general penalty and/or suspension or revocation of the license.
- (b) In addition to any revocation proceedings pursuant to Paragraph M, violations of these regulations may be subject to the penalties as set forth by resolution adopted by the Town Council. Each separate act in violation of these regulations, and each and every day or portion thereof during which any separate act in violation of these regulations is committed, continued, or permitted, shall be deemed a separate offense.
- (c) After the effective date of the ordinance from which these regulations derive, it shall be unlawful for any tobacco product retailer to sell a tobacco product without a license as mandated under these regulations, or with a suspended or revoked license. A retailer whose license has been suspended or revoked:
 - (1) Shall not display tobacco products in public view during the timeframe in which the license is suspended or revoked; and
 - (2) Shall not display advertisements relating to tobacco products 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.

O. Enforcement.

- (a) The remedies provided by these regulations are cumulative and in addition to any other remedies available at law or in equity. In addition to other remedies provided by these regulations or by other law, any violation of these regulations may be remedied by a civil action brought by the Town Attorney, including but not limited to nuisance abatement proceedings and injunctive relief.
- (b) Causing, permitting, aiding, abetting, or concealing a violation of any provision of these regulations shall cause the offender to be subject to the penalties set forth herein.

P. No rights in license.

Every license issued under these regulations confers only a limited and conditional privilege subject to the requirements, conditions, limitations and qualifications of these regulations. 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 Town Council or the electorate of the Town, as provided in these regulations, without any compensation to the licensee. Nothing contained in these regulations grants to any licensee any vested right to continue operating under the provisions of these regulations 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.

Q. Effective date.

These regulations shall become effective as of May 9, 2024, and enforceable on and after that date. Any tobacco product retailer without a license after the effective date will be in violation of these regulations. Any tobacco product retailer in the Town holding a Summit County tobacco product retailer license will be transferred to the Town of Keystone without the assessment of a fee and the tobacco product retailer will be required to follow these regulations.

Section 3. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance, the intention being that the various sections and provisions are severable.

Section 4. Codification. This ordinance may be codified and numbered for purposes of codification without the need for further approval by the Town Council.

Section 5. Effective Date. This ordinance shall take effect and be enforced thirty (30) days after final publication.

INTRODUCED, READ AND PASSED AS AN ORDINANCE, ON FIRST READING, AT A REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF KEYSTONE, COLORADO, THIS

26th DAY OF March, 2024.

READ, PASSED AND ADOPTED AS AN ORDINANCE ON SECOND READING, AT A
REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF KEYSTONE,
COLORADO, THIS
9th DAY OF April, 2024.

Kenneth D. Riley
Kenneth D. Riley, Mayor

ATTEST:

Madeline Zielu
Town Clerk

APPROVED AS TO FORM:

Jimmy Mader
Town Attorney