City of Carroll

Brad Burke, Chief of Police **Police Department**

112 E. 5th Street Carroll, Iowa 51401-2799 (712) 792-3536 FAX: (712) 792-8088

MEMO TO: Mike Pogge-Weaver, City Manager

FROM: Brad Burke, Chief of Police

DATE: September 29, 2020

SUBJECT: Carroll City Ordinance Chapter 46.02, 121.01, and 121.07 amendment

Chapter 46 of the Carroll City Codes deals with Minors. Chapter 121 of the Carroll City Codes deals with Cigarette and Tobacco Permits. During the 2020 Legislative session for the State of Iowa, state code was changed to match federal code in which it is now illegal for anyone under the age of 21 to purchase or possess tobacco and vapor products. The attached ordinance amendments make the changes to the City Code of Ordinances to match the state and federal code. Also attached are the code sections indicating the changes.

RECOMMENDATION: Council consideration of the ordinance changes to Chapter 46.02 of the City of Carroll Code of Ordinances. Council consideration of the ordinance changes to Chapter 121.01 subsection 1 and 9 of the City of Carroll Code of Ordinances. Council consideration of the ordinance change to Chapter 121.07 of the City of Carroll Code of Ordinances.

ORDINANCE NO._____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF CARROLL, IOWA, 2011, BY AMENDING PROVISIONS PERTAINING TO MINORS

BE IT ENACTED by the City Council of the City of Carroll, Iowa:

SECTION 1. Chapter 46, Section 02, of the Code of Ordinances of the City of Carroll, Iowa, 2011, is repealed and the following adopted in lieu thereof:

46.02 CIGARETTES, TOBACCO, ALTERNATIVE NICOTINE PRODUCTS AND VAPOR PRODUCTS.

It is unlawful for any person under twenty-one (21) years of age to smoke, use, possess, purchase, or attempt to purchase any tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes. Possession of tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes by a person under twenty-one (21) years of age shall not constitute a violation of this section if said person possesses any of these items as part of the person's employment and said person is employed by a person who holds a valid permit under 453A of the Code of Iowa and lawfully sells or offers these products for sale.

(Code of Iowa, Sec. 453A.2)

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 4. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval and publication as provided by law.

Passed and approved this _____ day of _____, 2020.

CITY COUNCIL OF THE
CITY OF CARROLL, IOWA

_____
Eric P. Jensen, Mayor

ATTEST:

_____
Laura A. Schaefer, City Clerk

I certify that the foregoing was published as Ordinance No._____ on the _____day of _____, 2020.

_____
Laura A. Schaefer, City Clerk

46.02 CIGARETTES, TOBACCO, ALTERNATIVE NICOTINE PRODUCTS AND VAPOR PRODUCTS.

It is unlawful for any person under ~~eighteen (18)~~ twenty one (21) years of age to smoke, use, possess, purchase, or attempt to purchase any tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes. Possession of tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes by a person under ~~eighteen (18)~~ twenty one (21) years of age shall not constitute a violation of this section if said person possesses any of these items as part of the person's employment and said person is employed by a person who holds a valid permit under 453A of the Code of Iowa and lawfully sells or offers these products for sale.

(Code of Iowa, Sec. 453A.2)

ORDINANCE NO._____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF CARROLL, IOWA, 2011, BY AMENDING PROVISIONS PERTAINING TO CIGARETTE AND TOBACCO PERMITS

BE IT ENACTED by the City Council of the City of Carroll, Iowa:

SECTION 1. Chapter 121, Section 01 of the Code of Ordinances of the City of Carroll, Iowa, 2011, is repealed and the following adopted in lieu thereof:

121.01
"Definitions:"

1. "Alternative nicotine product" means a product, not consisting of or containing tobacco, that provides for the ingestion into the body of nicotine, whether by chewing, absorbing, dissolving, inhaling, snorting, or sniffing, or by any other means. "Alternative nicotine product" does not include cigarettes, tobacco products, or vapor products, or a product that is regulated as a drug or device by the United State food and drug administration under chapter V of the federal Food, Drug, and Cosmetic Act.
2. Carton" means a box or container of any kind in which ten or more packages or packs of cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.
3. "Cigarette" means any roll for smoking made wholly or in part of tobacco, or any substitute for tobacco, irrespective of size or shape and irrespective of tobacco or any substitute for tobacco being flavored, adulterated or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material. However, this definition is not to be construed to include cigars.
4. "Package" or "pack" means a container of any kind in which cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.
5. "Place of business" means any place where cigarettes or tobacco products are sold, stored or kept for the purpose of sale or consumption by a retailer.
6. "Retailer" means every person who sells, distributes or offers for sale for consumption, or possesses for the purpose of sale for consumption, cigarettes, irrespective of the quantity or amount or the number of sales or who engages in the business of selling tobacco products to ultimate consumers.
7. "Self-service display" means any manner of product display, placement, or storage from which a person purchasing the product may take possession of the product, prior to purchase, without assistance from the retailer or employee of the retailer, in removing the product from a restricted access location.
8. "Tobacco products" means the following: cigars; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts or refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or for both chewing and smoking, but does not mean cigarettes.

9. "Vapor Products" means any noncombustible product, which may or may not contain nicotine, that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from a solution or other substance. "Vapor product" includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device, and any cartridge or other container of a solution or other substance, which may or may not contain nicotine, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. "Vapor product" does not include a product regulated as a drug or device by the United State food and drug administration under chapter V of the federal Food, Drug, and Cosmetic Act.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 4. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval and publication as provided by law.

Passed and approved this _____ day of _____, 2020.

CITY COUNCIL OF THE
CITY OF CARROLL, IOWA

_____
Eric P Jensen., Mayor

ATTEST:

_____
Laura A. Schaefer, City Clerk

I certify that the foregoing was published as Ordinance No._____ on the _____day of _____, 2020.

_____
Laura A. Schaefer, City Clerk

121.01 DEFINITIONS.

For use in this chapter the following terms are defined:

(Code of Iowa, Sec. 453A.1)

1. "Alternative nicotine product" means a product, not consisting of or containing tobacco, that provides for the ingestion into the body of nicotine, whether by chewing, absorbing, dissolving, inhaling, snorting, or sniffing, or by any other means. "Alternative nicotine product" does not include cigarettes, tobacco products, or vapor products, or a product that is regulated as a drug or device by the United State food and drug administration under chapter V of the federal Food, Drug, and Cosmetic Act.
2. Carton" means a box or container of any kind in which ten or more packages or packs of cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.
3. "Cigarette" means any roll for smoking made wholly or in part of tobacco, or any substitute for tobacco, irrespective of size or shape and irrespective of tobacco or any substitute for tobacco being flavored, adulterated or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material. However, this definition is not to be construed to include cigars.
4. "Package" or "pack" means a container of any kind in which cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.
5. "Place of business" means any place where cigarettes or tobacco products are sold, stored or kept for the purpose of sale or consumption by a retailer.
6. "Retailer" means every person who sells, distributes or offers for sale for consumption, or possesses for the purpose of sale for consumption, cigarettes, irrespective of the quantity or amount or the number of sales or who engages in the business of selling tobacco products to ultimate consumers.
7. "Self-service display" means any manner of product display, placement, or storage from which a person purchasing the product may take possession of the product, prior to purchase, without assistance from the retailer or employee of the retailer, in removing the product from a restricted access location.
8. "Tobacco products" means the following: cigars; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts or refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or for both chewing and smoking, but does not mean cigarettes.
9. "Vapor Products" means any noncombustible product, which may or may not contain nicotine, that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from a solution or other substance. "Vapor product" includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device, and any cartridge or other container of a solution or

other substance, which may or may not contain nicotine, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. “Vapor product” does not include a product regulated as a drug or device by the United State food and drug administration under chapter V of the federal Food, Drug, and Cosmetic Act.

ORDINANCE NO._____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF CARROLL, IOWA, 2011, BY AMENDING PROVISIONS PERTAINING TO CIGARETTE AND TOBACCO PERMITS

BE IT ENACTED by the City Council of the City of Carroll, Iowa:

SECTION 1. Chapter 121, Section 07 of the Code of Ordinances of the City of Carroll, Iowa, 2011, is amended by adding the following provisions:

121.07

"Persons under legal age:"
No person shall sell, give, or otherwise supply any tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes to any person under twenty-one (21) years of age. The provision of this section includes prohibiting a person under twenty-one (21) years of age from purchasing cigarettes or tobacco products from a vending machine. If a retailer or employee of a retailer violates the provisions of this section, the Council shall, after written notice and hearing, and in addition to the other penalties fixed for such violation, assess the following:

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 4. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval and publication as provided by law.

Passed and approved this _____ day of _____, 2020.

CITY COUNCIL OF THE
CITY OF CARROLL, IOWA

_____
Eric P Jensen., Mayor

ATTEST:

_____
Laura A. Schaefer, City Clerk

I certify that the foregoing was published as Ordinance No._____ on the _____day of _____, 2020.

_____
Laura A. Schaefer, City Clerk

121.07 PERSONS UNDER LEGAL AGE.

No person shall sell, give, or otherwise supply any tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes to any person under ~~eighteen (18)~~ twenty-one (21) years of age. The provision of this section includes prohibiting a person under ~~eighteen (18)~~ twenty-one (21) years of age from purchasing cigarettes or tobacco products from a vending machine. If a retailer or employee of a retailer violates the provisions of this section, the Council shall, after written notice and hearing, and in addition to the other penalties fixed for such violation, assess the following:

1. For a first violation, the retailer shall be assessed a civil penalty in the amount of three hundred dollars ($300.00). Failure to pay the civil penalty as ordered under this subsection shall result in automatic suspension of the permit for a period of fourteen (14) days.
2. For a second violation within a period of two years, the retailer shall be assessed a civil penalty in the amount of one thousand five hundred dollars ($1,500.00) or the retailer's permit shall be suspended for a period of thirty (30) days. The retailer may select its preference in the penalty to be applied under this subsection.
3. For a third violation within a period of three years, the retailer shall be assessed a civil penalty in the amount of $1,500.00 and the retailer's permit shall be suspended for a period of 30 days.
4. For a fourth violation within a period of three years, the retailer shall be assessed a civil penalty in the amount of $1,500.00 and the retailer's permit shall be suspended for a period of sixty (60) days.
5. For a fifth violation with a period of four years, the retailer's permit shall be revoked.

The Clerk shall give ten (10) days' written notice to the retailer by mailing a copy of the notice to the place of business as it appears on the application for a permit. The notice shall state the reason for the contemplated action and the time and place at which the retailer may appear and be heard.

(Code of Iowa, Sec. 453A.2, 453A.22 and 453A.36[6])