

Town of Johnston
State of Rhode Island and Providence Plantations

ADOPTED
DATE 6/12/17
ATTEST: *[Signature]*

Ordinance 2017- 7

“AN ORDINANCE AMENDING SECTION 125-18 OF CHAPTER 125 OF THE TOWN OF JOHNSTON CODE OF ORDINANCES ENTITLED “MANNER OF SALE OF TOBACCO AND DRUG PARAPHANALIA REGULATED”

The Town Council of the Town of Johnston hereby ordains:

§ 125-18

Manner of sale of tobacco and drug paraphernalia regulated.

A. Findings and purposes.

- (1) Substantial scientific evidence exists that the use of tobacco products causes cancer, heart disease, and various other medical diseases. The Surgeon General of the United States has found that tobacco-caused diseases are the leading cause of premature, preventable death and disability in the United States;
- (2) The National Centers for Disease Control has found that at least 434,000 Americans die each year from tobacco-caused diseases. The Surgeon General of the United States and the U.S. Department of Health and Human Services have found that a minority of those Americans die of tobacco-caused diseases became addicted to nicotine in tobacco products as adolescents before the age of legal consent.
- (3) The National Institute on Drug Abuse has concluded that the nicotine in tobacco products is a powerful addictive drug and identify nicotine addiction as the most widespread example of drug dependence in the United States;
- (4) The Surgeon General of the United States has found that nicotine in tobacco products is as addictive as cocaine and heroin; and
- (5) The National Institute on Drug Abuse has found that tobacco use by adolescents precedes and is predictive of adolescent illicit drug use.

B. Definitions. The following words and phrases, whenever used in this article, shall be construed as defined in this section:

Board of licenses

The Johnston Town Council sitting as the Board of License Commissioners

BUSINESS

Any sole proprietorship, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered in the Town of Johnston.

Characterizing flavor

A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint, or wintergreen, imparted either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or

spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information.

Cigar

Any roll of tobacco other than a Cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing more than four pounds per thousand.

Cigarette

(1) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and (2) any roll of tobacco wrapped in any substance containing tobacco which, 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 clause (1) of this definition.

Component part

Any element of a tobacco product, including, but not limited to, the tobacco, filter, and paper, but not including any constituent.

Constituent

Any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, which is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product. Such term shall include a smoke constituent.

Consumer means a person who purchases a tobacco product for consumption and not for sale to another.

Coupon

Any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue; whether in paper, digital, or other form; used for commercial purposes to obtain an article, product, service, or accommodation without charge or at a discounted price.

Distinguishable

Perceivable by an ordinary consumer by either the sense of smell or taste.

DRUG PARAPHERNALIA

Is defined by R.I.G.L. § 21-28.5-1.

Electronic smoking device

An electronic device which can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. Electronic smoking device includes any such electronic smoking device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, and electronic hookah, or any other product name or descriptor. Electronic smoking device does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

Electronic smoking device establishment

Any business which does not sell food or beverages and for which the principal or core business is selling electronic smoking devices, as evidenced by any of the following: [thirty-three percent (33%)] or more of floor or display area is devoted to electronic smoking devices; or [sixty-seven percent (67%)] or more of gross sales receipts are derived from electronic smoking devices.]

EXEMPT BUSINESS

Any business, except tobacco specialty stores, that does not allow anyone under 18 years of age to enter unless accompanied by an adult. These establishments will be exempt from the article as written.

Flavored tobacco product

Any tobacco product, other than a cigarette, that contains a constituent that imparts a characterizing flavor.

Full retail price

The higher of the price listed for a tobacco product on its packaging or the price listed on any related shelving, posting, advertising, or display where the tobacco product is sold or offered for sale, plus all applicable taxes and fees if such taxes and fees are not included in the listed price, and before the application of any discounts or coupons.

Little cigar

Any roll of tobacco other than a Cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than four pounds per thousand. "Little Cigar" includes, but is not limited to, tobacco products known or labeled as "small cigar" or "little cigar."

Non-cigarette tobacco product

A tobacco product that is not a cigarette.

Package or packaging

A pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a tobacco product is sold or offered for sale to a consumer.

PERSON

Any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

Sale or sell

Any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner or by any means whatsoever.

SELF-SERVICE MERCHANDISING

Open display of tobacco products and point-of-sale tobacco products that the public has access to without the intervention of an employee.

Smoke constituent

Any chemical or chemical compound in mainstream or sidestream tobacco product smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives, or other component of the tobacco product.

TOBACCO PRODUCT

~~Any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other manner of ingestion.~~

(1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoke, 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, and snuff; and (2) any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah. Notwithstanding any provision of clauses (1) and (2) in this definition to the contrary, tobacco product includes any component, part, or accessory of a tobacco product, whether or not sold separately; tobacco product does not include any product that has been approved by the United States

Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

TOBACCO RETAILER

Any person or governmental entity that operates a store, stand, booth, concession, or other place at which sales of tobacco products are made to purchasers for consumption or use in the Town of Johnston.

Vending machine

Any mechanical, electric, or electronic self-service device which, upon insertion of money, tokens, or any other form of payment, dispenses tobacco products.

VENDOR ASSISTED

Any automated, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.

TOBACCO SPECIALTY STORE

A tobacco retailer whose business exclusively or primarily involves the sale of tobacco products and related goods.

C. Regulation of manner of sale of tobacco products; License Required.

(1) It shall be unlawful for any person, business, or tobacco retailer, except tobacco specialty stores which do not allow persons under the age of 18 to enter the premises, to sell, permit to be sold, offer for sale or display for sale any tobacco products or drug paraphernalia by means of self-service merchandising.

(2) It shall be unlawful to sell or to possess with the intention of selling tobacco products within the city without having first obtained a tobacco dealer's license pursuant to this article. Such license shall be in addition to any other license required by state and/or federal law. A tobacco dealer's license is valid for one person at one location and may not be transferred from one person to another or from one location to another.

(a) Licenses shall only be granted to authorize the sale of tobacco products within the city at a fixed location. For example, the sale of tobacco products by persons on foot or from vehicles is prohibited.

(b) Application for a license shall be submitted to the board of licensees together with an application fee of One Hundred dollars (\$100). A tobacco dealer's license shall be effective through the thirty-first day of December of the calendar year for which it is issued. No license shall be granted without proof that the applicant has obtained all necessary state licenses for the sale of tobacco products.

D. Enforcement. Enforcement of this article shall be the responsibility of the Chief of Police or his or her designee. All licenses granted under the provisions of this article shall be displayed in a conspicuous place within the business so licensed.

E. Fees Violations and penalties.

(1) It shall be unlawful for any person who owns, managers, operates or otherwise controls the use of any premises subject to this article to fail to comply with any of its provisions.

(2) Any person, business, tobacco retailer, or owner, manager or operator of any establishment subject to this article shall eliminate the self-service merchandising of tobacco products, except for tobacco specialty stores which do not allow persons under the age of 18 to enter the premises.

(3) Any person, business, tobacco retailer, or owner, manager or operator of any establishment subject to this article who violates any provision of this article shall be deemed guilty of an infraction, punishable by:

(a) First violation, \$250.

(b) Second violation within one year, a fine, not exceeding \$350, payable to the Town of Johnston.

(c) Third violation within one year, a fine, not exceeding \$500, payable to the Town of Johnston.

(d) For a fourth or more violation within one year, a fine, not exceeding \$1,000, payable to the Town of Johnston.

(4) Failure to obtain and maintain a valid license shall result in a fine of five hundred dollars (\$500). The fee for the tobacco dealer's license shall be one hundred dollars (\$100) per year; which shall be remitted to the Johnston

Prevention Coalition, Tri-County Community Action Agency, so long as it is a non-profit organization in good standing with the Rhode Island Secretary of State.

F. Requirements and prohibitions applicable to licensees.

(1) No licensee, or employee or agent of such licensee, shall sell or possess with the intention of selling a tobacco product to another person who appears to be under the age of twenty-seven (27) years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and possess the tobacco product.

(2) *Display of price.* The price of each tobacco product offered for sale shall be clearly and conspicuously displayed to clearly indicate the price of the product.

(3) *Packaging and labeling.* No licensee, or employee or agent of such licensee, shall sell any tobacco product unless such product: (1) is sold in the original manufacturer's packaging intended for sale to consumers; and (2) conforms to all applicable federal labeling requirements.

(4) *Prohibition of tobacco coupons and discounts.* No licensee, or employee or agent of such licensee, shall:

(a) Accept or redeem, or offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco product to a consumer without charge or for less than the full retail price;

(b) Sell any tobacco product to a consumer through a multiple-package discount (e.g., "buy-two-get-one-free") or otherwise provide any tobacco product to a consumer for less than the full retail price in exchange for the purchase of any other tobacco product;

(c) Provide any free or discounted item to a consumer in exchange for the purchase of any tobacco product.

(5) *Sale of flavored tobacco products prohibited.* No licensee, or employee or agent of such licensee, shall sell any flavored tobacco product to a consumer. A non-cigarette tobacco product is presumed to be a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees has: (1) made a public statement or claim that the non-cigarette tobacco product has or produces a characterizing flavor, including, but not limited to, text and/or images on the product's labeling or packaging that are used to explicitly or implicitly communicate information about the flavor, taste, or aroma of a non-cigarette tobacco product; or (2) taken action directed to consumers that would be reasonably expected to result in consumers believing that the non-cigarette tobacco product imparts a characterizing flavor. Each licensee shall maintain on the premises the original labeling and packaging provided by the manufacturer for all tobacco products that are sold or offered for sale by the licensee separately from the original packaging designed for retail sale to the consumer. The original labeling and packaging from which the contents are sold separately shall be maintained during such time as the contents of the package are offered for sale, and may be disposed of upon the sale of the entire contents of such package.

This subsection shall not apply to the following businesses:

A smoking bar as defined in Section 23-20.10-2(15) of the Rhode Island General Laws
An electronic smoking device establishment

G. Suspension or revocation of license – fines and costs.

The Johnston Police Department shall enforce the provisions of this article. All licensees shall be subject to a compliance check at least two (2) times a year; violators shall be checked more frequently until two (2) consecutive compliance checks are completed without violation. If an alleged violation occurs, the Johnston Police Department shall issue a citation that will require the licensee to appear for a show cause hearing before the board of licensees. If, after a hearing, the board finds that a violation has occurred, the board shall impose a civil fine of two hundred and fifty dollars (\$ 250) for the first offense, three hundred and fifty dollars (\$350) for the second offense, and five hundred dollars (\$500) for any subsequent offense. Additionally, the board may suspend or revoke the license. If a licensee maintains its license for thirty-six (36) consecutive months without a violation, any new violation shall be treated as a first offense. It is the intent of this legislation that all fines collected by the city hereunder shall be used by the board of licensees and the Johnston Police Department for the purpose of conducting tobacco product compliance checks.

H. Use of premises during license suspension.

During the period of any suspension of a tobacco dealer's license, the licensee shall remove all tobacco products from the retail display area of the location and secure them in a locked area for the duration of the suspension. If, at any time during the suspension period, the licensee is found to be selling, distributing, or delivering any tobacco products, the license shall be revoked.

I. Vending machines.

Businesses which have vending machines shall be subject to the same fines and penalties as described in this article. In the event that a tobacco dealer's license is suspended or revoked, then the vending machine shall be removed from the licensed location for the period of suspension or revocation.

J. Severability.

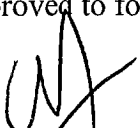
If any provision of this article, or application thereof to any person or circumstances, is held unconstitutional, illegal, or otherwise invalid, the remaining provisions of this article and the application of such provisions to other persons or circumstances, other than those to which it is held invalid, shall not be affected thereby.

SECTION 2: This ordinance shall take effect upon passage.



Councilperson

Approved to form:



Town Solicitor