

**ORDINANCE NO. 9946**

**AN ORDINANCE OF THE CITY OF LAWRENCE, KANSAS, REPEALING EXISTING CHAPTER 9, ARTICLE 8A AND ENACTING, IN ITS PLACE, CHAPTER 9, ARTICLE 8A OF THE CODE OF THE CITY OF LAWRENCE, KANSAS, 2018 EDITION, AND AMENDMENTS THERETO, PERTAINING TO TOBACCO RETAIL LICENSING.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LAWRENCE, KANSAS:**

**SECTION 1:** Existing Chapter 9, Article 8A, of the Code of the City of Lawrence, Kansas, 2018 Edition, and amendments thereto, is hereby repealed in its entirety, it being the intent of the Governing Body that Section 2 of this Ordinance supersede it

**SECTION 2:** The Code of the City of Lawrence, Kansas, 2018 Edition, and amendments thereto, is hereby amended by adding Chapter 9, Article 8A, which reads as follows:

**ARTICLE 8A. TOBACCO RETAIL LICENSING**

9-8A01

**SHORT TITLE.**

This article shall be known as the "Tobacco Retail Licensing Act."

9-8A02

**PURPOSE.**

The Governing Body finds that, in order to advance the health, safety, and welfare of the residents of the City of Lawrence, Kansas, it is necessary to regulate certain activities, including the sale of tobacco at retail.

9-8A03

**DEFINITIONS.**

The following words, terms, and phrases, when used in this Article, shall, except where the context clearly indicates otherwise, have the following meanings:

- (a) **Distribute or Distribution** means to furnish, give away, provide, sell or attempt to do so, whether gratuitously or for any type of compensation.
- (b) **Electronic Smoking Device** means any electronic or battery-operated device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including an electronic cigarette, electronic cigar, electronic pipe, electronic hookah or vape pen. Electronic smoking device includes any component, part, or accessory of any device listed herein. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act at 21 U.S.C. § 321, as amended.
- (c) **Flavored Tobacco Product** means any tobacco product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of a tobacco product, including, but not limited to any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa,

vanilla, honey, molasses, or any candy, dessert, alcoholic beverage, herb, or spice.

- (d) **Lawrence-Douglas County Public Health or L-DCPH** shall mean designated representatives of the Lawrence-Douglas County Public Health Department's Environmental Health Program Area vested with the power to enforce the provisions of this Article and issue citations or notices to appear for violations thereof.
- (e) **License** means a certificate granting permission to distribute tobacco products within the City of Lawrence. There are two licenses applicable to this Article: (1) a **Tobacco Retail License**, which grants permission for a tobacco retailer to distribute tobacco products; and (2) a **Tobacco Self-Service Display License**, which grants permission for a self-service display operator to distribute tobacco products.
- (f) **Person** means any natural person.
- (g) **Purchaser** means any person who obtains or attempts to obtain a tobacco product.
- (h) **Self-Service Display** means any coin, currency, or token-operated machine containing a display from which customers may select for purchase a tobacco product without assistance from the tobacco retailer or the tobacco retailer's agent or employee and without a direct person-to-person transfer between the purchaser and the tobacco retailer or tobacco retailer's agent or employee. A vending machine is a form of self-service display.
- (i) **Tobacco Product** means: (1) any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (2) any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or (3) any component, part, or accessory of (1) or (2), whether or not any of these contain tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, and pipes. Tobacco product does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act at 21 U.S.C. § 321, as amended.
- (j) **Tobacco Retail Establishment** means any place of business where tobacco products are available for sale to the general public. The term includes but is not limited to grocery stores, tobacco product shops, kiosks, convenience stores, gasoline service stations, bars, and restaurants.
- (k) **Tobacco Retailer** means any person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation who owns, operates, or manages any tobacco retail establishment or self-service

display. Tobacco retailer does not include non-management employees of any tobacco retailer.

9-8A05 **LICENCE REQUIRED.**

- (a) It shall be unlawful for any Tobacco Retailer to engage in the Distribution of Tobacco Products, unless such Tobacco Retailer has first obtained from L-DCPH and is in possession of a valid and current Tobacco Retail License to sell or otherwise Distribute Tobacco Products. A Tobacco Retail License is required for each location in which such Tobacco Retailer sells or Distributes Tobacco Products.
- (b) It shall be unlawful for any person or business operating a Self-Service Display to engage in the Distribution of Tobacco Products, unless such person or business has obtained from L-DCPH and is in possession of a valid and current Tobacco Self-Service Display License to sell or otherwise Distribute Tobacco Products. A Tobacco Self-Service Display License is required for each location in which such person or business, operating a Self-Service Display, sells or Distributes Tobacco Products.

9-8A06 **LICENSE APPLICATION; ISSUANCE, DENIAL.**

- (a) Application for a License under this Article shall be made with L-DCPH on a form provided by the L-DCPH for that purpose.
- (b) Within 14 days of receipt of an application for a License under this Article, the L-DCPH shall issue the License unless:
  - (1) The application is incomplete;
  - (2) The application is determined to be fraudulent, to include a material misrepresentation, or to contain a false statement;
  - (3) The L-DCPH determines that the applicant is not currently in compliance with the Kansas Cigarettes and Tobacco Products Act of 1933, codified as amended at K.S.A. 79-3301 *et seq.*;
  - (4) The applicant has had a Tobacco Retail License or Tobacco Self-Service Display License revoked within 12 months, preceding the date of application; or
  - (5) The applicant has been convicted, under federal, state, or local laws for an offense related to the distribution or use of Tobacco Products within 36 months, preceding the date of application.
- (c) If the application is determined to be deficient because it is incomplete under Section 9-8A06(b)(1), including the failure to pay the License Fee or failure to sign the document provided by L-DCPH, L-DCPH shall give notice to the applicant 14 days therefrom within which to provide a completed application.

- (d) If the application is denied under Section 9-8A06(b)(2)-(5), or the applicant fails to complete the application within the fourteen-day period of Section 9-8A06(c), then L-DCPH shall deny the application by giving Notice of Denial to the applicant. Notice of Denial shall be in writing, shall be mailed to the applicant, shall inform the applicant of the reason for denial with specificity, including all documentation supporting any allegation of fraud or material misrepresentation, and shall state that the applicant has 14 days from the date of the Notice of Denial in which to file with L-DCPH any written Notice of Appeal in accordance with Section 9-8A18.
- (d) The L-DCPH shall maintain a copy of the Notice of Denial in its files.

9-8A07

**LICENSE FEE.**

- (a) The License Fee for each Tobacco Retail License required by this Article shall be \$260.00 per year and shall be due at the time of application.
- (b) The License Fee for each Tobacco Self-Service Display License required by this Article shall be \$15.00 dollars per year and shall be due at the time of application.
- (c) The License Fee shall be prorated for the year in which it is issued. The License Fee, however, shall not be refunded upon suspension or revocation of a Rental License.
- (d) The fees stated in this Section shall be used to cover the administrative costs for administering licenses, providing education and training, and making retail inspections, and unannounced compliance checks as authorized by law. L-DCPH shall, from time to time, review the costs of the License Fees and adjust the License Fees to insure that the program established by this Article remains revenue neutral.

9-8A08

**TERM.**

Each License issued under this Article, as amended, shall be valid until 11:59 p.m. on December 31 of the year in which the License is issued.

9-8A09

**LICENSES NON-ASSIGNABLE AND NON-TRANSFERABLE.**

Licenses issued under this Article are non-assignable and non-transferable.

9-8A10

**DISPLAY.**

- (a) Each Licensee issued a Tobacco Retail License shall display the License in a prominent location at the Tobacco Retail Establishment.
- (b) Each Licensee issued a Tobacco Self-Service Display License shall display the License in a prominent location on the Tobacco Self-Service Display.

9-8A10

**TOBACCO RETAILER RESPONSIBILITIES.**

- (a) Each applicant for a Tobacco Retail License shall sign a form, provided and maintained by L-DCPH, stating that the applicant has read this Article and has provided training to all of its employees, if any, who engage in the Distribution of Tobacco Products. Such training shall include but not be limited to providing information that the Distribution of Tobacco Products to Persons under 21 years of age is prohibited, the types of identification legally acceptable to establish proof of age, and that sales to Persons under 21 years of age will subject the Tobacco Retailer to penalties.
- (b) Upon the issuance of any Tobacco Retailer License, the Tobacco Retailer shall be responsible for providing ongoing education to all new agents or employees regarding the laws prohibiting the Distribution of Tobacco Products to Persons under 21 years of age.

9-8A11

**TOBACCO RETAILER LICENSE RENEWAL.**

- (a) On or about November 1 of each year, L-DCPH will mail to each Tobacco Retail Licensee and to each Tobacco Self-Service Display Licensee a renewal Notice and a renewal application form.
- (b) To renew a License under the Article, the Licensee must, BEFORE January 1 of the succeeding year: (1) remit to L-DCPH the License Fee established at Lawrence-Douglas County Public Health the Tobacco Retailer License Fee as set forth at Section 9-8A07; (2) complete the renewal application form; (3) sign the statement that the Licensee has read this Article and has provided training to all of its employees, if any, who engage in the Distribution of Tobacco Products; and (4) return the completed renewal application form and all requested information to L-DCPH.
- (c) A License issued under this Article shall not be renewed if the Licensee has any outstanding fines issued under this Article, if the renewal form is incomplete, or if L-DCPH determines that the Licensee is no longer in compliance with the Kansas Cigarettes and Tobacco Products Act of 1933, codified as amended at K.S.A. 79-3301 *et seq.*
- (d) Any renewal application received after January 1 but before March 1 of the succeeding year, shall be approved by Lawrence-Douglas County Public Health -- provided that the renewal application meets all requirements of Section 9-8A11(c) -- if the Licensee includes all information required for renewal and remits to L-DCPH a \$75.00 late fee in addition to the License Fee or License Fees due upon renewal. Any License not renewed before March 1 of the succeeding year will be deemed abandoned and will not be renewed.

9-8A12

**AGE VERIFICATION.**

- (a) Before selling or Distributing any Tobacco Product, the Tobacco Retailer or the Tobacco Retailer's agent or employee shall verify that the

purchaser of the Tobacco Product is at least 21 years of age. Each Tobacco Retailer or Tobacco Retailer's agent or employee shall examine the purchaser's government-issued photographic identification, which may include a driver's license, state identification card, passport, or military identification. No such verification shall be required for any Person who reasonably appears to be over 30 years of age.

- (b) It shall be a defense to a prosecution under this section if the Tobacco Retailer or Tobacco Retailer's agent or employee sold or Distributed Tobacco Products to the person under 21 years of age, if the Tobacco Retailer or Tobacco Retailer's agent or employee had reasonable cause to believe that the Person purchasing the Tobacco Products was of legal age to purchase or receive such Tobacco Products.

9-8A13 **SELF-SERVICE DISPLAYS.**

No Tobacco Retailer or Tobacco Retailer's agent or employee shall sell or Distribute Tobacco Products from a Self-Service Display except in locations where persons under 21 years of age are not permitted access at any time. In other words, Self-Service Displays are prohibited except in locations where persons under 21 years of age are excluded at all times.

9-8A14 **SIGNAGE.**

No Tobacco Retailer shall sell, permit the sale of, or Distribute Tobacco Products within the City unless a notice is posted at any location where Tobacco Products are available for purchase. All notices must be posted in a manner conspicuous to both employees and consumers, unobstructed from view in their entirety, and within six (6) feet of each register where Tobacco Products are available for purchase. Lawrence-Douglas County Public Health shall provide this notice, which shall state: "NO PERSON UNDER THE AGE OF 21 MAY BE SOLD TOBACCO PRODUCTS, INCLUDING ELECTRONIC SMOKING DEVICES." The notice must be at least 14" by 11" and the words on the notice must be legibly printed in a high contrast red color with capitalized letters at least one inch high.

9-8A15 **CONTINUING EDUCATION.**

L-DCPH shall provide a continuing public health education program to explain the purposes and requirements of this Article and to provide guidance to Tobacco Retailers and their agents or employees with respect to compliance with its terms. The program may include, among other things, the publication of a brochure explaining the provisions of this Article and signage mandated by this Article.

9-8A16 **SUSPENSION OR REVOCATION.**

- (a) L-DCPH may suspend or revoke any Tobacco Retail License or any Tobacco Self-Service Display License if the Licensee directly or, through an agent or employee, indirectly:
  - (1) Violates any provision of this Article; or
  - (2) Sells or Distributes Tobacco Products to a Person under 21 years of age.

- (b) Upon a second conviction of any violation of this Article within 36 months of the first conviction, L-DCPH shall suspend the license for 7 days. Upon a third conviction of any violation of this Article within 36 months of a first conviction, L-DCPH shall suspend the license for 30 days. Upon a fourth or subsequent conviction of any violation of this Article within 36 months of a first conviction, L-DCPH shall suspend the license for 3 years.
- (b) If L-DCPH suspends or revokes a License issued under this Article, then L-DCPH shall issue a written Notice of Suspension or Notice of Revocation to the Licensee. In determining whether to suspend or to revoke a License, L-DCPH shall take into account the severity of the violation and all other relevant mitigating and aggravating circumstances, including, but not limited to whether or not the Licensee has had other revocations or convictions under this Article. The Notice of Suspension or Notice of Revocation shall be in writing, shall be mailed to the applicant, shall inform the applicant of the reason for suspension or revocation with specificity, shall state the date upon which the suspension or revocation shall be effective, and shall state that the applicant has 14 days from the date of the Notice of Suspension or Notice of Revocation in which to file with L-DCPH any written Notice of Appeal in accordance with Section 9-8A17.
- (c) When a License is suspended or revoked, the Licensee shall remove all products and advertising for those products from view, until such time that the License is no longer suspended or revoked. Failure to remove items shall be deemed a violation of this Article.
- (d) If the Licensee brings an appeal, then Section 9-8A16(c) shall be stayed during the pendency of the appeal, unless L-DCPH finds that the violation or violations are so egregious that a stay will harm the health, safety, and welfare of the community.

9-8A17

**APPEAL.**

- (a) Any applicant or Licensee aggrieved by the action of L-DCPH in issuing a Notice of Denial, a Notice of Suspension, or Notice of Revocation may appeal such action by filing with the L-DCPH a Notice of Appeal within fourteen (14) days of the date of the Notice of Appeal, the Notice of Suspension, or Notice of Revocation. The Notice of Appeal shall be in writing and shall set forth in sufficient detail why the Licensee believes that the Notice of Denial, Notice of Suspension, or Notice of Revocation issued by L-DCPH was issued erroneously. When a Notice of Appeal is filed, the burden of proof shall be on the applicant or Licensee to show, by a preponderance of the evidence presented, that the allegations set forth in the Notice of Appeal are true.
- (b) After a Notice of Appeal is filed with L-DCHA, the Director of the Lawrence-Douglas County Health Department shall within 14 days of receiving the Notice of Appeal, set the Appeal for hearing. The Director may request additional information from L-DCPH or the appellant, as may

be necessary. The hearing shall be informal. The appellant shall be given the opportunity to show that the Notice of Denial, Notice of Suspension, or Notice of Revocation was issued in error. The Department may ask L-DCPH to make any rebuttal.

- (c) Within 14 days of the hearing, the Director shall issue a written finding either affirming or reversing the decision of the L-DCPH and stating the reasons therefor. The written finding shall be served upon the applicant or the Licensee in the same manner as the Notice of Denial, Notice of Suspension, or Notice of Revocation.
- (d) If the action of L-DCPH is reversed, then the Notice of Denial, Notice of Suspension, or Notice of Revocation is rescinded. If the action of L-DCPH is affirmed, then any automatic stay under Section 9-8A12(c) shall be lifted and the applicant or Licensee shall not be permitted to sell or Distribute Tobacco Products under this Article and any Licensee shall comply with the provisions of Section 9-8A16(c).
- (e) The decision of the Director shall be the final order of L-DCPH. Any person aggrieved by a final order of the Director shall have the right, in accordance with state law, to appeal that final order to the District Court of Douglas County, Kansas.

9-8A18

**UNLAWFUL CONDUCT.**

- (a) It shall be unlawful for any Person or any business establishment to sell or Distribute Tobacco Products without first acquiring from L-DCPH and having in said Person's or establishment's possession a valid and current Tobacco Retail License or Tobacco Self-Service Display License for the Tobacco Retail Establishment or Self-Service Display selling or Distributing Tobacco Products.
- (b) It shall be unlawful for any Tobacco Retailer, either directly or indirectly, through agents, employees, or other means, to sell or Distribute Tobacco Products to Persons under 21 years of age.
- (c) It shall be unlawful for any Tobacco Retailer, either directly or indirectly, through agents, employees, or other means, to violate any provision of this Article.

9-8A19

**PENALTIES**

- (a) Engaging in any of the unlawful acts set forth at Section 9-8A18 shall be a separate municipal offense. Any Tobacco Retailer violating a provision of Section 9-8A18 of this Article shall, upon an adjudication of guilt or the entry of a plea of no contest, be subject to the following:
  - (1) For a first conviction, a fine of not less than \$500;
  - (2) For a second conviction, occurring within 36 months from a first conviction, a fine of not less than \$750.



- (3) For a third conviction, occurring within a 36 months from a first conviction, a fine not less than \$1,000, and
  - (4) For a fourth and any subsequent convictions, occurring within 36 months from a first conviction, a fine not less than \$1,000.
- (b) All fines collected under this Section shall be deposited into a "Tobacco Prevention and Education Fund" administered by L-DCPH, to be reinvested for community education, youth tobacco prevention, and efforts to improve compliance with state and local tobacco product sales and use laws.
  - (c) No prosecution shall be commenced under this Article for any alleged violation of this Article against any Person other than a Tobacco Retailer.

9-8A20

**EXEMPTIONS; DEFENSES.**

- (a) The penalties established in this Article do not apply to persons younger than 21 years of age who purchase or attempt to purchase Tobacco Products while under the direct supervision of L-DCPH staff or their authorized appointees for training, education, research, or any enforcement purposes as authorized by law.
- (b) Nothing in this Article shall be construed to prohibit Persons under 21 years of age from handling tobacco products in the course of lawful employment by a Tobacco Retailer.
- (c) Nothing in this Article shall be construed to prohibit the Distribution of Tobacco products to any Person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.
- (d) It shall be an affirmative defense to a violation of this Article for a Tobacco Retailer or a Tobacco Retailer's agent or employee to have reasonably relied on proof of age.

9-8A21

**LAWRENCE-DOUGLAS COUNTY PUBLIC HEALTH RESPONSIBILITIES.**

- (a) L-DCPH shall have the authority to adopt rules and regulations not inconsistent with the terms of this Article for the purpose of carrying out and enforcing the objectives set out in the title hereof. A copy of such rules and regulations shall be approved by the Governing Body and filed and made available for public examination in the office of the City Clerk. Copies of such rules and regulations shall also be made available to all applicants under this Article. Failure or refusal to comply with any of the rules and regulations promulgated under this Section shall be deemed a violation of this Article.

- (b) It shall be the duty of L-DCPA to enforce the provisions of this Article. The Governing Body hereby grants to L-DCPA the authority to issue citations and notices to appear for any violations under this Article.
- (c) L-DCPA shall expeditiously advise the City Clerk of any licenses granted under the authority of this Article and denials, suspensions, or revocations of the same, upon request.

9-8A22 **ENFORCEMENT.**

A tobacco retailer shall be subject to at least two unannounced compliance checks per year. L-DCPH or its authorized designee shall conduct compliance checks for the purposes of evaluating compliance with this Article, by engaging persons between the ages of 18 and 20 to enter the tobacco retail establishment to attempt to purchase tobacco products. Unannounced follow-up compliance checks of all non-compliant tobacco retailers are required within three months of any violation of this Article. The results of all compliance checks shall be published at least annually and made available to the public upon request, in compliance with applicable open records laws.

**SECTION 2:** If any section, clause, sentence, or phrase of this ordinance is found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining parts of this ordinance.

**SECTION 3:** After passage and publication as provided by law, this ordinance shall be in full force and effect commencing January 1, 2023.

**PASSED** by the Governing Body of the City of Lawrence, Kansas, this \_\_\_\_ day of October, 2022.

**APPROVED:**

\_\_\_\_\_  
Courtney Shipley  
Mayor

**ATTEST:**

\_\_\_\_\_  
Sherri Riedemann  
City Clerk

**APPROVED AS TO FORM:**

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