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AN ORDINANCE RELATING TO HEALTH, REQUIRING THAT TOBACCO PRODUCTS BE OFFERED FOR SALE IN A MANNER SO THE PUBLIC DOES NOT HAVE DIRECT ACCESS TO THE PRODUCTS; PROVIDING CIVIL PENALTIES; PROVIDING ENFORCEMENT AUTHORITY; AND PROVIDING AN EFFECTIVE DATE

#### 1.0 TITLE

This ordinance shall be known as the Tobacco Sales Ordinance - Regulation of the Manner of Sale of Tobacco Products.

#### 2.0 PURPOSES AND FINDINGS

The Cedar Fort Town Council does hereby find that:

2.1 More than half of all smokers begin smoking before the age of 14, and 90% begin by the age of 19.

2.2 The average age of first use of tobacco products is now 11 to 15 years of age.

2.3 In recognition of the Surgeon General's conclusion that nicotine is as addictive as cocaine or heroin, action is needed to curtail the easy access of minors to cigarettes and other tobacco products.

2.4 The National institute on Drug abuse has concluded that the nicotine in tobacco products is a powerful addictive drug and identifies nicotine addiction as the most widespread example of drug dependence in the United States, and has found that tobacco use by adolescents precedes and is predictive of adolescent illicit drug use.

Therefore, the purpose of this ordinance is to implement a strict and enforceable system to prevent the illegal sale of cigarettes and other tobacco products to minors.

Accordingly, the Town Council finds and declares it in the public interest to:

2.5 Prohibit self-service sales and self-service displays, racks and shelves of tobacco products.

2.6 Require the posting of warning signs at the point of purchase stating the legal age of sale and that identification is required to purchase tobacco.

2.7 Prohibit the sale of tobacco products through vending machines.

### 3.0 DEFINITIONS

The following words and phrases, whenever used in this ordinance, shall be construed as defined in this section:

3.1 "Business" means 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.

3.2 "Person" shall mean any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

3.3 "Self-service merchandising" means point of sale is an open display of tobacco products and tobacco promotional products that the public has access to without the intervention of an employee.

3.4 "Tobacco product" means 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.

3.5 "Tobacco promotional products" means advertisement material including but not limited to baseball caps, tee-shirts, gym bags, coffee mugs, sunglasses, jackets, and related items which have tobacco advertising logos, images, characters, messages and themes printed on them.

3.6 "Tobacco retailer" shall mean any person or governmental entity that operates a store, stand, booth, concession, or other place at which sales of tobacco products are made available to purchasers for consumption or use.

3.7 "Tobacco vending machine" means any electronic or mechanical device or appliance, the operation of which depends upon the insertion of money, whether in coin or paper currency, or other things representative of value, which dispenses or releases a tobacco product.

3.8 "Vendor-assisted" means only a store employee has access to the tobacco product and tobacco promotional products, and assists the customer by supplying the product. The customer does not take possession of the product until it is purchased.

3.9 "Place of Business" means any and all places such as shops, stores, factories, public garages, offices, theaters, recreation and dance halls, pool rooms, cafes,

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cafeterias, cabarets, restaurants, hotels, lodging houses, streetcars, buses, interurban and railway passenger coaches and waiting rooms.

3.10 "Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity, who employs the services of one or more individual persons.

3.11 "Employer" means any person, partnership, corporation, including a municipal; corporation, or non-profit entity, who employs the services of one or more individual persons.

3.12 "Minor" shall mean any individual who is less than 19 years old.

3.13 "Retailer" means a person who owns or is responsible for supervising the day-today operation of a business where tobacco products are displayed or otherwise offered for sale.

#### 4.0 REGULATION OF MANNER OF SALE OF TOBACCO PRODUCTS

4.1 Any person, business, tobacco retailer or other establishment subject to this ordinance shall post plainly visible sign at the point of purchase of tobacco products which state "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER NINETEEN YEARS OF AGE IS PROHIBITED BY LAW. PHOTO ID IS REQUIRED TO PURCHASE TOBACCO." The letters of these signs shall be at least one half inch (1/2") high.

4.2. No person business, tobacco retailer, or owner, manger or operator of any establishment subject to this ordinance shall sell, offer to sell or permit to be sold any tobacco product to an individual without requesting and examining identification establishing the purchaser's age as nineteen years or greater unless the seller has some reasonable basis for determining the buyers age.

4.3 It shall be unlawful for any person, business, or tobacco retailer to sell, permit to be sold, offer for sale or display for sale any tobacco products or tobacco promotional product by means of self-service merchandising or by means other than vendor-assisted sales.

4.4 No person business, or tobacco retailer shall locate, install, keep, maintain or use or permit the location, installation, keeping, maintenance or use of his/her or its premises any vending machine for the purposes of selling or distributing any tobacco product.

5.0 LICENSING

Every Retailer who Distributes tobacco products within the boundaries of Utah County or any city or town therein within the jurisdiction of the Health Department shall obtain a permit for each individual retail establishment from the Health Department. When new applicants obtain a permit for less than a year they shall pay the annual permit fee on prorated basis.

5.1 No retailer shall be issued a permit as required herein without full compliance with these regulations. Applications for Permits shall be made available by the Health Department.

5.2 The permit shall be held by the Retailer predicated on compliance with these regulations.

5.3 Noncompliance with requirements of these regulations will result in enforcement actions indicated in section 7 of these regulations.

5.4 Permits shall be displayed with the business license within the facility where tobacco products are distributed.

5.5 A fee for the permit shall be assessed Retailers according to a fee schedule adopted by (the county). The fee schedule is contained in section 6 of these regulations and may be changed and updated (by the Board of Health).

5.6 Replacement of lost permits shall be provided for a fee of \$5.00.

5.7 Permits issued to a specific establishment are not transferable (either to a new owner or to a different store).

5.8 The Health Department may deny, suspend, or revoke a permit of a Retailer and/or require surrender of the permit and other official documents of permitting upon showing that:

5.8.1 A Retailer has violated one or more of the requirements of these regulations.

5.8.2 A Retailer submitted an annual application and was issued a permit by the Health Department that did not, at the time of inspection, comply with all applicable policies and procedures of these regulations.

5.8.3 The Retailer fraudulently obtained a permit.

5.8.4 The 'Retailer falsifies any Official document required by the Health Department pursuant to these regulations.

5.9 Permits are issued annually (January 1 through December 31) and must be renewed annually.

#### 6.0 FEE SCHEDULE

The assessed fees for implementing the requirements of section 5 shall be \$50.00 annually.

#### 7.0 ENFORCEMENT PROVISIONS

7.1 Enforcing Agents of the (County) may enforce these regulations.

7.2 Compliance with these regulations will be determined by inspections, investigations, undercover operations, ect. by the Health Department using these regulations and other applicable laws and standards as the measure of compliance.

7.3 Every act or omission of any nature, constituting a violation of any of the provisions of these regulations by a Person of any permitted establishment shall be deemed and held to be the act or omission of the Retailer.

7.4 Any violation of the provision of these regulations by any Retailer or Retailer's employees shall result in suspension or revocation of the license as determined by the Health Department.

7.5 It shall be unlawful for any Retailer to sell/distribute any tobacco products during suspension or revocation of their permit.

7.6 Reapplication may be made two years after revocation of permit if the Retailer maintains compliance with these regulations for the two year period after revocation.

7.7 If the Enforcing Agent of the (Health Department) has reasonable grounds to believe that there has been a violation of any part(s) of these Regulation, he/she shall give written notice of the violation(s) to the Responsible Person of the establishment in question.

7.8 If suspension of a Retailer's permit to sell tobacco is deemed necessary for violations of these regulations, the Enforcing Agent shall issue a notice pursuant to this section and shall provide the address where violation(s) occurred and give a statement for the cause of the suspension.

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7.9 Any person(s) receiving notice of violation may request in writing within three business days a hearing before the Health Officer or his/her representative. The suspension is automatic if the hearing is not requested within three business days. The hearing will take place within ten (10) business days after receipt of the written request. A written notice of the Hearing Officer's final determination shall be given within ten (10) business days after adjournment of the hearing. The Hearing Officer may apply the appropriate penalty or may modify, or reverse any action or order. In no case shall the final determination of the hearing Officer be less than the requirements of these regulations or other applicable law.

7.10 The administrative penalties and procedures enumerated herein do not in any way preclude any civil or criminal proceeding regarding violation

#### **8.0 VOLUNTARY COMPLIANCE.**

In order to increase voluntary compliance with this ordinance, the Town of Cedar Fort shall conduct informational activities to notify and educate tobacco retailers and the public of this ordinance.

#### **9.0 STATUTORY SEVERABILITY**

If any provision, clause, sentence or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

#### **10.0 PREEMPTION**

Nothing in this document preempts any federal, state, municipal, or other local authority's regulation of reducing youth access to tobacco or tobacco licensing that is more protective than this document. Nothing in this document may be preempted by any federal, state, municipal, or other local authority's regulation of reducing youth access to tobacco or tobacco licensing that is less protective than this document.

#### **11.0 NON-RETALIATION**

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer reported violations of any provisions of this ordinance.

This ordinance shall be in effect upon posting APPROVED AND ADOPTED THIS 25th Day of October 2016

TOWN COUNCIL OF CEDAR FORT, UTAH COUNTY, UTAH



Mayor

ATTEST:

By:  \_\_\_\_\_

Town Clerk/Recorder


Councilmember Howard Anderson

Voted Yea 

Councilmember Ellen Cibula

Voted Yea 

Councilmember Larry Mohler

Voted Yea 

Councilmember Chris Murphy

Voted YEA C.M.

Councilmember Richard Stark


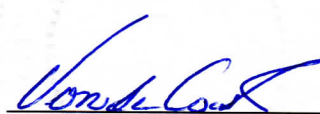
Voted YEA 

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF UTAH                )

I, VONDA Cook, Town Recorder of Cedar Fort Town, Utah, do hereby certify and declare that the above and foregoing is a true, full, and correct copy of an ordinance passed by the Town Council of Cedar Fort Town, Utah, on the 25<sup>th</sup> day of October 2016, entitled

**“TOBACCO SALES”**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of Cedar Fort Town Utah this 25<sup>th</sup> day of October 2016.

  
  
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VONDA Cook  
Cedar Fort Town Recorder

(SEAL)



**AFFIDAVIT OF POSTING**

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF UTAH                )

I, Vonda Cook, Town Recorder of Cedar Fort Town, Utah, do hereby certify and declare that I posted in three (3) public places the following summary of the ordinance which was passed by the Cedar Fort Town Council on the 25<sup>th</sup> day of October 2016 and herein referred to as:

**“TOBACCO SALES”**

**SUMMARY:**

The above named ordinance was enacted to define rules and regulations regarding retail sales and marketing of tobacco products. Definitions of terms and means of marketing, presentation, identification of minors and sales or all tobacco products within the Town of Cedar Fort are described.

The three places are as follows:

- 1. Post Office
- 2. Town Hall
- 3. Cedar Valley Store

  
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Vonda Cook  
Cedar Fort Town Recorder

Date of Posting 26 October 2016