

## **ORDINANCE NO. 488**

### **AN ORDINANCE AMENDING CHAPTER 5 – MINORS- AND CREATING ARTICLE C ENTITLED**

#### **“PREVENTION OF YOUTH ACCESS TO TOBACCO”**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEWOKA, OKLAHOMA, AS FOLLOWS:**

**Chapter 5 entitled Article C “PREVENTION OF YOUTH ACCESS TO TOBACCO” is amended by creating Sub-section 5-6C et. seq. as follows:**

- 5-6C-1: DIFINITIONS;**
- 5-6C-2: FURNISHING OR SALE OF TOBACCO PRODUCTS TO MINORS;**
- 5-6C-3: RECEIPT OF TOBACCO PRODUCTS BY MINOR;**
- 5-6C-4: DISTRIBUTION OF TOBACCO PRODUCT SAMPLES;**
- 5-6C-5: SALE OF TOBACCO PRODUCTS EXCEPT IN ORIGINAL SEALED PACKAGE;**
- 5-6C-6 PUBLICACCESSTO DISPLAYED TOBACCO PRODUCTS**
- 5-6C-7 REPORT OF VIOLATIONS AND COMPLIANCE CHECKS;**

### **Article C. Prevention of Youth Access to Tobacco**

#### **5-6C-1: DEFINITIONS**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- A. *Cigarette* means any product that contains nicotine, 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 filter, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in this definition.

The term "cigarette" includes "roll-your-own" (i.e. any tobacco which, 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.) For purposes of this definition of cigarette, nine one-hundredths (0.09) of an ounce of "roll-your -own" tobacco shall constitute one individual "cigarette".

- B. *Proof of age* means a driver's license, license for identification only, or other government issued photo identification that describes the individual as 18 years of age or older and contains a photograph or other likeness of the individual and appears on its face to be valid;
- C. *Sample* means a tobacco product distributed to members of the public at no cost for the purpose of promoting the product;

- D. Sampling means the distribution of samples to members of the public in a public place;
- E. Tobacco *product* means any product that contains tobacco and is intended for human consumption;
- F. Transaction *scan* means the process by which a seller checks, by means of a transaction scan device, the validity of a driver's license or other government-issued photo identification; and
- G. Transaction *scan device* means any commercial device or combination of devices used at a point of sale or entry that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver's license or other government -issued photo identification.

#### **5-6C-2: FURNISHING OR SALE OF TOBACCO PRODUCTS TO MINORS**

- A. It is unlawful for any person to sell, give, or furnish in any manner any tobacco product to another person who is under eighteen (18) years of age or to purchase in any manner a tobacco product on behalf of any such person. It shall not be unlawful for an employee under eighteen (18) years of age to handle tobacco products when required in the performance of the employee's duties.
- B. Any person engaged in the sale or distribution of tobacco products shall demand proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser may be under eighteen (18) years of age.
- C. Defenses: Proof that the defendant demanded , was shown, and reasonably relied upon proof of age shall be a defense to prosecution under Subsections (A.) or (B.) of this section. A person cited for violation of this section shall be deemed to have reasonably relied upon proof of age, and such person shall not be found guilty of such violation, if such person proves that:
  - 1. The individual who purchased or received the tobacco product presented a driver's license or other government-issued photo identification purporting to establish that such individual was eighteen (18) years of age or older; and
  - 2. The person cited for the violation confirmed the validity of the driver's license or other government-issued photo identification presented by such individual by performing a transaction scan by means of a transaction scan device.
  - 3. Provided, that this defense shall not relieve from liability any person cited for a violation of this section if such person failed to exercise reasonable diligence to determine whether the physical description and picture appearing on the driver's license or other government-issued photo identification was that of the individual who presented it. The availability of the defense described in this subsection does not affect the availability of any other defense under any other provision of law.

D. When a person is convicted or enters a plea and receives a continued sentence for a violation of subsections (A) or (B) of this section, the total of any fines, fees, or costs shall not exceed the following:

1. One Hundred Dollars (\$100.00) for the first offense;
2. Two Hundred Dollars (\$200.00) for the second offense within a two-year period following the first offense; and
3. Three Hundred Dollars (\$300.00) for the third or subsequent offense within a two- year period following the first offense.

#### **5-6C-3: RECEIPT OF TOBACCO PRODUCTS BY MINORS.**

A. It is unlawful for any person who is under eighteen (18) years of age to purchase, receive, or have in his or her possession a tobacco product, or to present or offer to any person any purported proof of age which is false or fraudulent for the purpose of purchasing or receiving any tobacco product. It shall not be unlawful for an employee under age eighteen (18) years of age to handle tobacco products when required in the performance of the employee's duties.

B. When a person is convicted or enters a plea and receives a continued sentence for a violation of subsections (A.) of this section, the total of any fines, fees, or costs shall not exceed the following:

1. One Hundred Dollars (\$100.00) for a first offense; and
2. Two Hundred Dollars (\$200.00) for a second or subsequent offense within a one- year period following the first offense.

#### **5-6C-4: DISTRIBUTION OF TOBACCO PRODUCT SAMPLES.**

A. It is unlawful for any person to distribute tobacco products or product samples to any person under eighteen (18) years of age.

B. No person shall distribute tobacco product samples in or on any public street, sidewalk, or park that is within three hundred (300) feet of any playground, school, or other facility when the facility is being used primarily by persons under eighteen (18) years of age.

C. When a person is convicted or enters a plea and receives a continued sentence for a violation of subsections (A.) or (B.) of this section, the total of any fines, fees, or costs shall not exceed the following:

4. One Hundred Dollars (\$100.00) for the first offense;
5. Two Hundred Dollars (\$200.00) for the second offense; and
6. Three Hundred Dollars (\$300.00) for the third or subsequent offense.

**5-6C-5: SALE OF TOBACCO PRODUCTS EXCEPT IN ORIGINAL, SEALED PACKAGE.**

- E. It is unlawful for any person to sell cigarettes except in the original, sealed package in which they were placed by the manufacturer.
- F. When a person is convicted or enters a plea and receives a continued sentence for a violation of this section, the total of any fines, fees, or costs shall not exceed Two Hundred Dollars (\$200.00) for each offense.

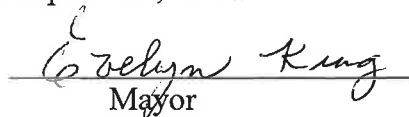
**5-6C-6: PUBLIC ACCESS TO DISPLAYED TOBACCO PRODUCTS.**

- A. It is unlawful for any person or retail store to display or offer for sale tobacco products in any manner that allows public access to the tobacco product without assistance from the person displaying the tobacco product or an employee or the owner of the store. The provisions of this subsection shall not apply to retail stores which do not admit into the store persons under eighteen (18) years of age.
- B. When a person is convicted or enters a plea and receives a continued sentence for a violation of this section, the total of any fines, fees, or costs shall not exceed Two Hundred Dollars (\$200.00) for each offense.

**5-6C-7: REPORT OF VIOLATIONS AND COMPLIANCE CHECKS.**

- A. Any conviction for a violation of this Article and any compliance checks conducted by the Police Department pursuant to Subsection (B.) of this section shall be reported in writing to the Alcoholic Beverage Laws Enforcement (ABLE) Commission within thirty (30) days of the conviction or compliance check. Such reports shall be compiled in the manner prescribed by the ABLE Commission. Convictions shall be reported by the Court Clerk or designee and compliance checks shall be reported by the Chief of Police or designee.
- B. Persons under eighteen (18) years of age may be enlisted by the Police Department to assist in enforcement of this Article pursuant to the rules of the ABLE Commission.

PASSED AND APPROVED this 10 day of September, 2013.

  
Mayor

ATTEST:

  
CITY CLERK

Ordinance No. 488

An Ordinance Amending Chapter 5  
AFFIDAVIT OF PUBLICATION

**Mike Gifford**, of lawful age, being first duly sworn upon oath, deposes and says he is the Advertising Manager of the newspaper, **The Wewoka Times**, and is duly authorized to make this affidavit. The notice by publication that is hereto attached and incorporated by reference, was published in said newspaper, The Wewoka Times in a regular full edition for one issue(s) and on the following day(s) to-wit:

September 18, 2013

Uninterruptedly, regularly, and continuously, for more than one hundred four consecutive weeks immediately prior to the date of the first publication of the attached notice, The Wewoka Times, as a newspaper has:

1. Been printed and published weekly in the City of Wewoka, County of Seminole, State of Oklahoma, in the English language.
  2. Had a bona fide paid general subscription and circulation in Seminole County, Oklahoma
  3. Been admitted to the United States mails as second class mail matter at the City of Wewoka, in Seminole County, Oklahoma
  4. Been delivered to the United States mails as 2nd class mail matter at the City of Wewoka, in Seminole County, Oklahoma
- The Wewoka Times comes within all of the prescriptions and requirements of 25 Oklahoma statutes 102 and 106 as well as all other requirements of HB327 of Acts of 18th Legislature of State of Oklahoma, as amended by SB47 of Acts of 19th Legislature of the state of Oklahoma and as amended by HB495 of Acts of 22nd Legislature of state of Oklahoma.
- Further affiant sayeth not.

Subscribed and sworn before me this 18<sup>th</sup> day of September, 2013

Notary public, my Commission Expires: 06/11/16  
Commission No. 12005479 (Seal in Blue ink)  
Amt. Paid : \$242.05



Published in The Wewoka Times September 18, 2013.

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AN ORDINANCE AMENDING CHAPTER 5 – MINORS- AND CREATING  
ARTICLE C ENTITLED "PREVENTION OF YOUTH ACCESS TO  
TOBACCO"

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- 5-6C-1: DEFINITIONS;
  - 5-6C-2: FURNISHING OR SALE OF TOBACCO PRODUCTS TO MINORS;
  - 5-6C-3: RECEIPT OF TOBACCO PRODUCTS BY MINOR;
  - 5-6C-4: DISTRIBUTION OF TOBACCO PRODUCT SAMPLES;
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  - 5-6C-7: REPORT OF VIOLATIONS AND COMPLIANCE CHECKS;
- Article C. Prevention of Youth Access to Tobacco

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-Over-