

**TOWN OF EAGLE, COLORADO  
ORDINANCE NO. 24  
(Series of 2019)**

**AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF EAGLE,  
COLORADO ADDING A NEW CHAPTER 5.16 TO THE EAGLE MUNICIPAL CODE  
REGARDING THE LICENSING OF RETAIL TOBACCO BUSINESSES**

WHEREAS, House Bill 19-1033, which took effect July 1, 2019, authorizes the Town to impose licensing requirements and related fees on retail tobacco businesses without losing its apportioned state cigarette tax revenue;

WHEREAS, the requirement for a retail tobacco license will not unduly burden legal business activities of retailers who sell tobacco products to adults in the Town; and

WHEREAS, the Town finds that licensing requirements for retail tobacco businesses, and related sales regulations related to cigarettes, tobacco products and nicotine products are appropriate and necessary to protect the health, safety, and welfare of the public.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF EAGLE, COLORADO, AS FOLLOWS:

Section 1. The Eagle Municipal Code is hereby amended by the addition of a new Chapter 5.16 to read as follows:

**Chapter 5.16  
RETAIL TOBACCO BUSINESSES**

**Section 5.16.010. –Purpose.**

The purpose of this Chapter is to ensure compliance with the business standards and practices of the Town, to regulate the sale of tobacco products at retail and thereby prohibit sales of tobacco products to youth and to encourage responsible tobacco product retailing.

**Section 5.16.020. – Definitions.**

A. For purposes of this Chapter, the following terms shall have the following meanings:

*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 filler, or its

packaging or labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

3. Any roll of tobacco wrapped in any substance containing tobacco that, 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 subsection (1) hereof.

4. The term "cigarette" includes roll-your-own, i.e. any tobacco that, 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.

*Cigar* means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any other substance containing tobacco. For purposes herein, cigar includes without limitation tobacco products known or labeled as a "cigar," "cigarillo" or "little cigar."

*Electronic Smoking Device* means any product containing or delivering nicotine intended for human consumption that can be used by an individual to simulate smoking in the delivery of nicotine or any other substance, even if marketed as nicotine-free, through inhalation from the product. Electronic smoking device includes any refill, cartridge or component part of a product, whether or not marketed or sold separately. Electronic Smoking Device does not include any product that has been approved or certified by the United States Food and Drug Administration for Sale as a tobacco cessation product or for other medically approved or certified purposes.

*Licensee* means the owner of a retail tobacco product license.

*Little cigar* means any roll of Tobacco other than a Cigarette wrapped entirely or in part in Tobacco and weighing no more than three pounds per thousand. "Little Cigar" includes, but is not limited to, any product known or labeled as "small cigar" "cigarillo" or "little cigar."

*Tobacco product* means:

1. Any product which contains, is made or derived from tobacco or used to deliver nicotine, synthetic nicotine or other substances intended for human consumption, whether 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, snuff, bidis, snus, nicotine products, mints, hand gels;
2. Electronic smoking devices; and
3. Notwithstanding any provision of subsections (1) and (2) hereof to the contrary, *tobacco product* includes any component, part, accessory or associated tobacco paraphernalia of a tobacco product whether or not sold separately.

*Tobacco product* does not include any product that contains marijuana or any product made from or derived from tobacco and approved by the Food and Drug Administration for use in connection with cessation of smoking.

*Retail tobacco business* means a person or entity engaged in the retail sale of tobacco products in the Town.

**Section 5.16.030. – License Required.**

A. It is unlawful for any retail tobacco business to operate in the Town without a valid and current license from the Town as set forth in this Chapter.

B. The requirements of this Chapter shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any federal state or local law or regulation, including without limitation a business license, retail sales tax license, retail food establishment license and any applicable zoning permits or building permits.

C. A separate license is required for each location of a retail tobacco business, and the license shall only be valid for the location designated in the application. No license may be issued to any location other than a fixed location. Licenses are not transferrable between persons or locations.

**Section 5.16.040. – Local Licensing Authority.**

A. For the purpose of regulating and controlling the licensing, distribution and sale of tobacco products within the Town, there is hereby created the Retail Tobacco Business Licensing Authority (the "Authority"). The Board of Trustees shall serve as the Authority, and the Authority shall have such powers and duties as are provided for in this Chapter.

B. The Authority shall be assisted by the Town Attorney, the Chief of Police, the Town Clerk and such other personnel as designated by the Town Manager.

**Section 5.16.050. – Application.**

A. Application for a retail tobacco business shall be made to the Town Clerk upon forms provided by the Town Clerk for that purpose. At a minimum, the application shall include the following information:

1. The name, address and date of birth of the owner or owners of the retail tobacco business. If the owner is a corporation, partnership, limited liability company or similar business entity, the application shall include the name and address of all principals. If the owner is not a natural person, the organization documents for all business entities identified in the application and the contact information for the person that is authorized to represent the entity shall be provided. All persons listed on the application must be 21 years of age or older.

2. The name, address and date of birth of the business manager, if the manager is proposed to be someone other than the owner, or if the owner is an entity other than a natural person.

3. Proof of ownership or legal possession of the proposed licensed premises for the term of the proposed license.

4. A statement of whether any of the named owners, principals, managers, or persons named on the application have been convicted, entered a plea of no contest, or entered a plea of guilty in conjunction with a deferred judgment and sentence pertaining to any charge related to the possession, use, or possession with intent to distribute narcotics, drugs or other controlled substances.

5. Any additional information reasonably requested by the Town Clerk.

B. All applications shall be accompanied by the payment of the application fee set by resolution of the Board of Trustees.

C. Upon receipt of an application for a retail tobacco product license, the Town Clerk shall circulate the application to the Town Planner, Building Official and the Police Department to determine whether the business is or will be in full compliance with all applicable laws, rules and regulations.

D. The Town Clerk shall not process any application that is not complete or otherwise in full compliance with this Chapter, or that contains any false information, but the Town Clerk shall provide a reasonable opportunity for an applicant to correct deficiencies in an application before denial.

**Section 5.16.060. – Consideration of Application.**

A. Within 30 days following the date the Town Clerk finds that an application is complete, the Authority shall consider the license application at a public meeting following notice to the applicant; no public hearing shall be required. The Authority may approve the application, deny the application, or approve the application with conditions. The applicant shall appear and be provided with an opportunity to address the Authority.

B. No application shall be approved unless:

1. All applicable requirements of this Chapter have been satisfied;

2. The premises on which the business will be located is compliant with all current zoning and building regulations;

3. All required fees have been paid by the applicant;

4. The applicant has obtained a State sales tax license, a Town sales tax license, and paid applicable general occupation taxes pursuant to Chapter 5.02;

5. The applicant is over 21 years of age as of the date of application.
- C. The Authority shall deny an application for a license if the Authority determines that:
1. Information contained in the application or supplemental information provided by the applicant is found to be false in any material respect;
  2. The applicant has had a license issued under this Chapter revoked within one year immediately preceding the filing of the application, or the applicant owned a 50% or greater interest in any business entity that has had a license issued under this Chapter revoked within one year immediately preceding the filing of the application;
  3. The applicant is in arrears to the Town for any administrative fines, court fines, assessments, taxes or other payment obligations; or
  4. The granting of the application will endanger public health or safety.
- D. The Authority may impose on the license any conditions related to the license, licensed premises, or adjacent grounds, that is reasonably necessary to protect the public health, safety or welfare.
- E. The Authority shall issue a written order within 30 days following the meeting at which the application was considered, and shall provide a copy of such order to the applicant by first-class U.S. mail addressed to the address shown on the application. If the application is granted, the Town shall forward a copy of the license to the applicant. If the application is denied, the Authority shall set forth in writing the grounds for denial.
- F. Licensees shall inform the Town Clerk in writing of any change to the information submitted on the original application for a license within 30 days of a change.
- G. Each license shall be valid for one year from the date such license is issued.

**Section 5.16.070. – License Renewal.**

- A. A licensee may renew its license by submitting an application to the Town Clerk at least 60 days, but not more than 90 days, before the expiration of the license. If a licensee fails to file a timely renewal application, the license shall expire by its terms.
- B. A licensee may renew a license that has expired if:
1. The license has expired for less than 90 days; and
  2. The licensee pays the regular renewal fee and an additional late renewal fee established by resolution of the Board of Trustees.

C. If a complete renewal application is timely filed, but the Authority does not rule on the application for renewal before the expiration date of the current license, the current license shall be deemed extended until the Authority issues a decision on the application for renewal, but in no event will the license be extended for more than 90 days.

D. The renewal application shall be processed in the same manner as an initial application.

**Section 5.16.080. – Limitations on Sales.**

A. It is unlawful to sell or distribute a tobacco product to a person under the age of 21. No licensee shall sell or transfer a tobacco product without first examining the government-issued photographic identification of the recipient to confirm that the recipient is at least 21 years of age. The minimum legal age for the purchase of tobacco products shall be prominently displayed in the entrance or other clearly visible location of the licensed premises.

B. A licensee shall not allow any person who is younger than 18 years of age to sell a tobacco product during the course of operation of the business.

C. A licensee shall stock and display all tobacco products in a manner so they are inaccessible to customers without the assistance of a retail clerk, thereby requiring a direct face-to-face exchange of the tobacco product from an employee of the business to the customer.

D. A licensee shall not display tobacco products in public view during the timeframe in which a license is suspended. A licensee shall cease to display tobacco products in public view upon revocation of a license issued pursuant to this Chapter.

E. The license shall be prominently displayed in a publicly visible location at the licensed premises.

F. The sale of tobacco products from a vending machine is prohibited.

**Section 5.16.090. – Suspension and Revocation.**

A. The Authority is authorized, on its own motion or on complaint, after investigation and opportunity for a public meeting at which the licensee is afforded an opportunity to be heard, to suspend or revoke a license issued under this Chapter.

B. Grounds for suspension or revocation of a license shall include without limitation:

1. A violation by a licensee or a licensee's officers, agents, or employees of any provision of this Chapter or any laws of the State of Colorado or Town ordinances relating to the sale or display of tobacco products;

2. Violations of any conditions imposed by the Authority in connection with the issuance or renewal of the license;

3. Failure to pay state or local taxes that are related to the operation of the business associated with the license;

4. Loss of the right to possession of the licensed premises; or

5. Fraud, misrepresentation or a false statement of material fact contained in the original or renewal license application.

C. In determining whether a license should be suspended or revoked, the Authority shall consider the following factors:

1. The nature and circumstances of the violation;

2. Any corrective action taken by the licensee;

3. Any prior violations by the licensee; and

4. The likelihood of recurrence of the violation.

D. A decision of the Authority suspending or revoking a license shall be final, subject only to judicial review under C.R.C.P. 106(a)(4).

**Section 5.16.100. – Violation and Penalties.**

A. Any person violating any provision of this Chapter commits a Class A municipal offense, punishable as set forth in Chapter 1.12. Each day of violation shall constitute a separate offense.

B. In addition to any other penalty authorized by law, when the Authority finds that a licensee has violated any provision of this Chapter, the Local Licensing Authority may consider the following presumptive penalties to be imposed for the violation, provided that such presumptive penalties shall not restrict the Authority's discretion to impose a greater or lesser penalty if the circumstances warrant:

1. One violation within 36 months: a civil penalty of \$500 and suspension of the license for 3 days;

2. Two violations within 36 months: a civil penalty of \$1,500 and a minimum of 20 days suspension of the license; and

3. Three violations within 36 months: a civil penalty of \$2,000 and revocation of the license.

C. In addition to any other available remedy, a violation of this Chapter is subject to a civil action brought by the Town, including without limitation nuisance abatement proceedings and injunctive relief. In any such civil action, the violator shall be responsible for payment of all costs incurred by the Town, including without limitation reasonable attorney fees, whether or not the Town prevails in such civil action.

Section 2. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board of Trustees hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one, or part, or parts be declared unconstitutional or invalid.

Section 3. Safety. This Ordinance is deemed necessary for the protection of the public health, safety and welfare.

Section 4. Effective Date. This Ordinance shall take effect 30 days after publication following adoption.

**INTRODUCED, READ, PASSED, ADOPTED AND ORDERED PUBLISHED ON DECEMBER 10, 2019.**

ATTEST:

  
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Jenny Rakow, Town Clerk



TOWN OF EAGLE, COLORADO

  
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Anne McKibbin, Mayor