

TOWN OF EAGLE, COLORADO

ORDINANCE NO. 06

(Series of 2025)

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF EAGLE, COLORADO
AMENDING CHAPTER 5.16 TO THE EAGLE MUNICIPAL CODE REGARDING THE
LICENSING OF RETAIL TOBACCO BUSINESSES**

WHEREAS, pursuant to C.R.S. § 31-15-103, municipalities shall have power to make and publish ordinances which are necessary and proper to provide for the safety, to preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of such municipality and the inhabitants thereof not inconsistent with the laws of this state; and

WHEREAS, the Town of Eagle (the "Town") is a home-rule municipality organized under Article XX of the Colorado Constitution and with the authority of the Eagle Home Rule Charter; and

WHEREAS, pursuant to Section 1.01.080 of the Eagle Town Code (the "Code"), the Town Council may amend the Code; and

WHEREAS, Section 5.16.080 of the Code sets forth the limitations on sale of tobacco and the related definitions in Section 5.16.020; and

WHEREAS, pursuant to C.R.S. § 31-15-401, the Town possesses the authority to adopt laws and ordinances within its police power in furtherance of the public health, safety, and welfare; and

WHEREAS, C.R.S. § 31-15-501 further allows the Town the authority to regulate businesses within the Town limits, further Article 7 of Title 44 of the Colorado Revised Statutes provides the Town with the authority to regulate tobacco sales; and

WHEREAS, cigarette smoking in the U.S. has declined substantially since the Surgeon General's 1964 report, from 42 percent smoking to now about 11 percent for adults; and

WHEREAS, despite such declines, tobacco use remains one of the greatest public health challenges in the United States where almost 500,000 Americans still die prematurely each year from diseases related to cigarette smoking, comprising 85 percent of lung cancer deaths, which in Colorado is the number one cause of preventable death and accounts for 5,100 deaths per year; and

WHEREAS, it is estimated that smoking directly causes \$2.19 billion in annual health care costs in Colorado; and

WHEREAS, 90% of adult smokers started smoking before the age of 18 and each year more than 7,900 adolescents in Colorado try their first cigarette; and

WHEREAS, youth use of electronic cigarettes (e-cigarettes), flavored tobacco, and similar products is associated with future cigarette use; and

WHEREAS, according to the Centers for Disease Control and Prevention, there were 1.6 million current youth e-cigarette users in 2024; and

WHEREAS, 8.7% of Colorado high school students use e-cigarettes according to a 2023 Colorado Survey;

WHEREAS, 42.1% of high school e-cigarette users are frequent or daily users, an indicator of addiction;

WHEREAS, e-cigarettes are available in a wide variety of kid-friendly flavors like cotton candy, gummy bear and pink lemonade.

WHEREAS, the U.S. Food and Drug Administration has concluded that menthol cigarettes lead to increased smoking initiation among youth and young adults, greater addiction, and decreased success in quitting smoking;

WHEREAS, half of youth who have ever tried smoking initiated with menthol-flavored cigarettes.

WHEREAS, the Town Council discussed the special interest in reducing the number of individuals of all ages, but particularly young people, from the use of tobacco products and determined that it was in the best interest of the health, safety, and welfare of the Town to disallow the sale of flavored tobacco products; and

WHEREAS, in light of the foregoing, the Town Council wishes to institute an amendment to the retail tobacco business license regulations in the interest of the health, safety, and welfare of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF EAGLE, COLORADO:

Section 1. Amendment to Code. Section 5.16.010 of the Code is hereby amended with additional language shown in double underlined text.

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, to prohibit the sale of flavored tobacco products, and to encourage responsible tobacco product retailing.

Section 2. Amendment to Code. Section 5.16.020 of the Code is hereby amended with additional language shown in double underlined text and deleted language in ~~strike through text~~ as follows. All sections not deleted, added to, or modified remain as if set out at length in the original form.

Section 5.16.020. – Definitions.

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

Accessory means any product that is intended or reasonably expected to be used with or for the human consumption of a tobacco product; does not contain tobacco and is not made or derived from tobacco; and meets either of the following:

1. Is not intended or reasonably expected to affect or alter the performance, composition, constituents, or characteristics of a tobacco product; or
2. Is intended or reasonably expected to affect or maintain the performance, composition, constituents, or characteristics of a tobacco product but:
 - a. Solely controls moisture and/or temperature of a stored tobacco product; or
 - b. Solely provides an external heat source to initiate but not maintain combustion of a tobacco product.

Accessory includes, but is not limited to, carrying cases, lanyards and holsters.

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Commercial tobacco means tobacco that is manufactured and sold for profit for use in cigarettes, smokeless tobacco, pipe tobacco, cigars, hookah and other products. Commercial tobacco is regulated by the Food and Drug Administration (FDA) under the Family Smoking and Prevention Act which gives the FDA the authority to regulate the manufacture, distribution and advertising of commercial tobacco. The word “tobacco” when referenced in this chapter, unless indicated otherwise, refers to commercial tobacco.

Component or part means any software or assembly of materials intended or reasonably expected:

1. To alter or affect the tobacco product's performance, composition, constituents, or characteristics; or
2. To be used with or for the human consumption of a tobacco product or electronic smoking device. Component or part excludes anything that is an accessory, and includes, but is not limited to e-liquids, cartridges, certain batteries, heating coils, programmable software and flavorings for electronic smoking devices.

Electronic smoking device means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, devices manufactured, marketed or sold as an e-cigarette, e-cigar, e-pipe, electronic smoking device, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic smoking device does not include medical marijuana as defined in 44-10-103 C.R.S. or retail marijuana as defined in 44-10-103 C.R.S., provided such product does not contain nicotine; or 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 ~~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.~~

Flavored tobacco product means:

1. Any tobacco product that imparts a taste or smell, other than the taste or smell of tobacco, either prior to or during the consumption of the product, including, but not limited to, any taste or smell relating to chocolate, cocoa, menthol, mint, wintergreen, vanilla, honey, fruit, or any candy, dessert, alcoholic beverage, herb, or spice; or
2. Any tobacco product that imparts a cooling or numbing sensation either prior to during the consumption of the tobacco product.

Any public statement or claim, whether express or implied, made or disseminated by the manufacturer or retailer of a licensed product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such products, that a product has or produces a taste or smell other than a taste or smell of tobacco or a cooling or numbing sensation will constitute presumptive evidence that the product is a flavored tobacco product. Presumptive evidence may include but is not limited to the use of terms such as, "cool," "chill," "ice," "fresh," "artic, or "frost" to describe the product.

License refers to a retail tobacco business license.

Licensing authority or authority means the retail tobacco business licensing authority created pursuant to Section 5.16.040 below.

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Manufacturer means any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a tobacco product; or imports a finished tobacco product for sale or distribution in the United States.

Nicotine means any form of the chemical nicotine, including any salt or complex, regardless of whether the chemical is naturally or synthetically derived, and includes nicotinic alkaloids and nicotine analogs.

Retail tobacco business means a person or entity engaged in the retail sale of tobacco products that sells a tobacco product to the general public, whether or not such person or entity is licensed, and includes, but is not limited to, grocery stores, tobacco product shops, convenience stores, liquor stores, and gasoline service stations.

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

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.~~

1. Any product containing, made of, or derived from commercial 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, products commonly known as a cigarette, a cigar, pipe tobacco, chewing tobacco, electronic smoking device, snuff, or snus; and pouch;
2. Any electronic smoking device as defined in this section and any substance 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) of this subsection, whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, mouthpieces, flavor enhancers, and pipes.

Tobacco product does not mean: medical marijuana, as defined in 44-10-103 C.R.S. or retail marijuana as defined in 44-10-103 C.R.S. provided such product does not contain nicotine; or 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.

Section 3. Amendment to Code. Section 5.16.030 of the Code is hereby amended with additional language shown in double underlined text as follows. All sections not deleted, added to, or modified remain as if set out at length in the original form.

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" or "licensing authority"). The Town Council shall serve as the authority, and the authority shall have such powers and duties as are provided for in this chapter.

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Section 4. Amendment to Code. Section 5.16.050 of the Code is hereby amended with additional language shown in double underlined text and deleted language in ~~striketrough text~~ as follows. All sections not deleted, added to, or modified remain as if set out at length in the original form

Section 5.16.050. – Application.

- A. Applications for a retail tobacco business license 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:

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- 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.

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Section 5. Amendment to Code. Section 5.16.060 of the Code is hereby amended with additional language shown in double underlined text and deleted language in ~~striketrough text~~ as follows. All sections not deleted, added to, or modified remain as if set out at length in the original form.

Section 5.16.060. – Consideration of Application.

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- 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~~ authority 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.

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Section 6. Amendment to Code. Section 5.16.080 of the Code is hereby amended with additional language shown in double underlined text and deleted language in ~~striketrough text~~

as follows. All sections not deleted, added to, or modified remain as if set out at length in the original form.

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~~ retail tobacco business 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~~ retail tobacco business 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~~ retail tobacco business 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.

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- G. No retail tobacco business shall sell any flavored tobacco product, or display, market, or advertise for sale in the Town any flavored tobacco product.

Section 7. Safety Clause. This Ordinance is deemed necessary for the protection of the public health, safety, and welfare.

Section 8. Severability. If any provision of this Ordinance or portion thereof is held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other provision which can be given effect without the invalid portion.

Section 9. Conflicts. All prior ordinances, resolutions, or other acts, or parts thereof, by the Town of Eagle in conflict with this Ordinance are hereby repealed, except that this repeal shall not be construed to revive any previously repealed or expired act, ordinance or resolution, or part thereof.

Section 10. Effective Date. This Ordinance shall become effective __ (__) days after publication.

INTRODUCED, READ, MOVED, AND ORDERED PUBLISHED ON August 26, 2025.

TOWN OF EAGLE, COLORADO



By: _____
Scott Turnipseed, Mayor

ATTEST:

By: _____

Camille Deering, Town Clerk



PROOF OF PUBLICATION

STATE OF COLORADO)
)
COUNTY OF EAGLE)

I, Camille Deering, Town Clerk for the Town of Eagle, do solemnly swear and affirm that I published in full a true and correct copy of ORDINANCE 06, SERIES 2025 "AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF EAGLE, COLORADO AMENDING CHAPTER 5.16 TO THE EAGLE MUNICIPAL CODE REGARDING THE LICENSING OF RETAIL TOBACCO BUSINESSES" on the Town of Eagle's website, www.townofeagle.org, on the 10th day of September, 2025.

Witness my hand and seal this 10th day of September, 2025.



Camille Deering,
Town Clerk



Ordinance Effective Date:

January 1, 2026