



## *City Attorney*

**DATE:** January 3, 2020

**FROM:** Janelle Combs, City Attorney

**ITEM:** Ordinance 6406 regarding Tobacco or Electronic Smoking Ages

### **REQUEST**

Consider introduction and call for a public hearing on Ordinance 6406 to amend Ordinances 5-11-04 and 6-07-01 regarding Violations and Sale of Tobacco or Electronic Smoking Devices to Minors.

Please place this item on the 1/14/2020 City Commission meeting agenda.

### **BACKGROUND INFORMATION**

On December 20, 2019, President Trump signed a federal law raising the legal age to purchase tobacco to 21. The changes on the attached ordinance will reflect the current state of federal law.

### **RECOMMENDED CITY COMMISSION ACTION**

First reading and introduction of Ordinance 6406 and call for a public hearing.

### **STAFF CONTACT INFORMATION**

Janelle Combs | City Attorney, 355-1340 or [jcombs@bismarcknd.gov](mailto:jcombs@bismarcknd.gov)

**CITY OF BISMARCK**  
**Ordinance No. 6406**

<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

AN ORDINANCE TO AMEND SECTIONS 5-11-04 and 6-07-01 OF THE BISMARCK CODE OF ORDINANCES RELATING TO VIOLATIONS AND SALE OF TOBACCO OR ELECTRONIC SMOKING DEVICES TO MINORS.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA:

Section 1. Amendment. Section 5-11-04 of the City of Bismarck Code of Ordinances relating to Violations is hereby amended and re-enacted to read as follows:

**5-11-04. Violations.**

\* \* \* \* \*

3. If after the hearing the Municipal Judge finds that the violation charged has occurred as proven by a preponderance of the evidence, the Municipal Judge may assess a fine of up to \$1000. The Municipal Court may suspend all or part of any fine imposed upon a showing by the person or business that it has attempted to train its employees on the prevention of the sale of tobacco products and electronic smoking devices to persons under ~~18~~21 years of age. The Municipal Court shall issue its Findings and Order which shall be served on the person or business. The decision of the Municipal Court shall be final.

(Ord. 5017, 11-23-99; Ord. 5157, 02-26-02; Ord. 6164, 10-27-15)

\* \* \* \* \*

Section 2. Amendment. Section 6-07-01 of the City of Bismarck Code of Ordinances relating to Sale of Tobacco or Electronic Smoking Devices to Minors is hereby amended and re-enacted to read as follows:

**6-07-01. Sale of Tobacco or Electronic Smoking Devices to Minors Person Under 21 Years of Age.**

1. Any person who sells or furnishes to a ~~minor person~~ under the age of 21, or procures for a ~~minor person~~ under the age of 21, cigarettes, cigarette papers, cigars, snuff, tobacco, tobacco products, or an electronic smoking device, in any form in which it may be utilized for smoking, inhaling or chewing is guilty of an infraction. For the purposes of this Chapter:

\* \* \* \* \*

2. No person over 13 and under ~~18~~21 years of age shall sell, possess, purchase, attempt to purchase, smoke or use tobacco products or an electronic smoking device or tobacco in any other form in which it may be utilized for smoking, inhaling, or chewing except that a person under ~~18~~21 years of age employed by a licensed tobacco dealer or distributor may handle the tobacco products, or electronic smoking devices listed in this section as a part of his or her employment. In addition, an individual under ~~eighteen~~21 years of age may purchase and possess tobacco products or an electronic smoking device as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco retailer, or association of tobacco retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority. Any person or business that is subject to a compliance survey shall be notified of the results within 7 days of the survey. Any person violating this section shall have committed a non-criminal violation and shall pay a fee of seventy (\$70) dollars, subject to the following procedures:

\* \* \* \* \*

3. It shall be an infraction for any person to sell or dispense any tobacco product or electronic smoking device through the use of a vending machine except that tobacco products or electronic smoking devices may be offered for sale or sold from a vending machine on licensed on-sale or off-sale alcoholic beverage premises in those areas not accessible to ~~minor~~persons under the age of 21 or through a

vending machine that requires a salesperson to control the dispensation of such product. Vending machines for tobacco products or electronic smoking devices located upon licensed premises must be located within the immediate vicinity, plain view and control of a responsible employee, so that all purchases will be readily observable. The vending machine shall not be located in a coat room, restroom, unmonitored hallway, outer lobby or waiting area or similar unobserved area; nor shall the vending machine be accessible to the public when the establishment is closed.

\* \* \* \* \*

*Reference: NDCC Sec. 12.1-31-03 (1985)  
(Ord. 4418, 02-25-92; Ord. 4687, 06-13-95; Ord. 4741, 01-23-96;  
Ord. 4826, 02-25-97; 4988, 05-25-99; Ord. 5017, 11-23-99; Ord.  
5031, 03-14-00; Ord. 5129, 08-28-01; Ord. 5160, 02-26-02; Ord.  
6029, 02-11-14; Ord. 6164, 10-27-15).*

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 4. Effective Date. This ordinance shall take effect following final passage, adoption and publication.