

CHAPTER TWENTY
SALE OF TOBACCO PRODUCTS
(Amended)

ARTICLE 1 B Sale of Tobacco Products

20.0101 Intent

20.0102 Definitions

20.0103 Sale of tobacco products through vending machines prohibited

20.0104 Behind the counter sale of tobacco products

20.0105 Sale of flavored tobacco products prohibited

20.0106 Sale of tobacco products to persons under the age of 21 years is prohibited

20.0107 Purchase, use and possession of tobacco products by persons under the age of 21 years is prohibited

20.0108 Violation - penalty

**CHAPTER TWENTY
SALE OF TOBACCO PRODUCTS**

ARTICLE 1 Sale of Tobacco Products

20.0101 Intent

The intent and purpose of this chapter is to preserve and protect the public's health, safety and welfare from the inherent risks and dangers of tobacco use by prohibiting the sale of tobacco products from vending machines, the sale or distribution of tobacco products to minors and the purchase and or use of tobacco products by minors.

20.0102 Definitions

The following words and terms, as used in this chapter, shall be defined as follows:

1. City means the city of Cando.
2. Distribute means to give tobacco products to the general public at no cost or at a nominal cost for product promotional purposes.
3. Minor means any person, regardless of sex, who has not yet reached the age of eighteen.
4. Person means any individual, partnership, corporation, or other business or other legal entity.
5. Retail tobacco dealer means any person, as defined herein, selling, offering for sale, exposing for sale or having in possession for sale, at retail, tobacco as defined herein.
6. Sell besides its ordinary purposes, means dispensing from a vending machine.
7. Tobacco product means any product that is made from or derived from tobacco, or that contains nicotine, that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus. Tobacco product also means electronic smoking devices and any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, and substances used in electronic smoking devices, whether or not they contain nicotine. Tobacco product does not include 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.
8. Vending machines means any kind of device or mechanical machine which, upon the insertion of a coin or coins, tokens or other objects will release tobacco products in packages or otherwise.
9. Electronic smoking devices means any device that can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking device includes any component, part or accessory of vaporized during the use of the device. Electronic smoking device does not include 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.

10. Characterizing flavors means distinguishable taste or aroma, other than the taste or aroma of tobacco, which is imparted either prior to or during consumption of a tobacco product or a component part thereof, including, but not limited to, tastes or aroma relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, mint, menthol, herb or spice and concepts such as spicy, arctic, ice, cool, warm, hot, mellow, fresh, and breeze; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredients information.

11. Flavored tobacco products means any tobacco product or any component thereof that contains a constituent that imparts a characterizing flavor. A public statement or claim made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product. Cigarettes, cigars and chewing tobacco are specifically excluded from this definition because it is the intention of the City that any prohibitions contained herein shall not apply to the sale of cigarettes or chewing tobacco.

20.0103 Sale of tobacco products through vending machines prohibited

It is unlawful for any person to sell or dispense any tobacco product through the use of a vending machine, provided, however, tobacco products may be offered for sale or sold from a vending machine in a licensed on sale or a licensed off sale alcoholic beverage establishment in any area of the premises where persons under twenty one years of age are prohibited and where the vending machine is located within the immediate vicinity, plain view and control of a responsible adult employee, so that all tobacco purchases will be readily observable by the employee. The vending machine shall not be located in the coatroom, restroom, unmonitored hallway, outer waiting area or similar unmonitored area; nor shall the vending machine be accessible to the public when the establishment is closed.

20.0104 Behind the counter sale of tobacco products

Except on licensed alcohol premises, as set forth in Section 20.0103 of this article, no tobacco products may be stored or displayed in a retail outlet in an area or in a manner that allows for self-service access by customers.

20.0105 Sale of flavored tobacco products prohibited:

It shall be unlawful for any person to sell, offer to sell, give away, barter, exchange or otherwise deal in or offer for sale any tobacco product characterizing flavor.

20.0106 Sale of tobacco products to persons under the age of 21 years is prohibited

It is unlawful for any person to sell or distribute tobacco products to a person under the age of 21. Tobacco retailers are required to post signature at each location where tobacco products are available for purchase. All notices must be posted in a manner that is conspicuous to both employees and consumers and unobstructed from view in their entirety and within 6 feet from each register where tobacco products are available for purchase. Must include information that no person under the age of 21 may be sold tobacco products, including electronic smoking devices. The notice should be printed in red with letters not less than 1" high for ease of the visually impaired.

20.0107 Purchase, use and possession of tobacco products by persons under the age of 21 years is prohibited

It is a non-criminal offense for a minor to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. However, an individual under eighteen years of age may purchase and possess tobacco 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

20.0108 Violation - Penalty

Tobacco retailer or person, if person is not associated with or employed by a tobacco retailer, violating the provisions of Section 20.0103, 20.0104, or 20.0106 of this article shall, upon conviction, be subject to a penalty of no less than five hundred (\$500.00) dollars. Each day that a violation is permitted to exist shall constitute a separate punishable offense.

Any person fourteen years of age or older violating the provisions of Section 20.0106 of this chapter shall be deemed a non-criminal violation. The fee must not be less than twenty-five (\$25.00) dollars and up to one hundred (\$100.00) dollars.

The City, any agent thereof or law enforcement officer with jurisdiction in the City, shall enforce the provisions of this ordinance. If an alleged violation occurs, the law enforcement officer or agency with jurisdiction in the municipality shall issue a citation requiring the offender to appear in District Court. It shall be the District Courts decision to use the sentencing defined in Article 5 of Chapter 13 of the Revised Ordinances of the City of Cando.

APPROVED by the Cando City Council, on this 12th day of May, 2020.

APPROVED:

Rollie Bjornstad, Cando City Mayor

ATTEST:

Annette Johnson, Cando City Auditor

First Reading: April 21, 2020.
Second Reading: May 12, 2020.
Published: Towner County Record Herald May 16th, 2020.