ORDINANCE NO. 4
SERIES 2011

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUNNISON AMENDING CHAPTER 5.10 OF THE GUNNISON MUNICIPAL CODE, GENERAL OFFENSES, PROHIBITING THE POSSESSION OF TOBACCO PRODUCTS BY PERSONS UNDER THE AGE OF EIGHTEEN, AND PROHIBITING THE FURNISHING OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF EIGHTEEN.

WHEREAS, the City Council of the City of Gunnison recognizes that the use of tobacco products has detrimental long-term health effects; and

WHEREAS, the State of Colorado prohibits the sale of tobacco products to persons under the age of eighteen; and

WHEREAS, persons under the age of eighteen in the City of Gunnison are using tobacco products at significantly higher rates compared to the State of Colorado as a whole; and

WHEREAS, prohibiting the possession of tobacco products by persons under the age of eighteen may act as a deterrent to the start of tobacco product use; and

WHEREAS, the City Council finds that provisions of this ordinance would benefit the health, safety, and welfare of the citizens of the City of Gunnison;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, ORDAINS THAT:

Section 1. Section 5.10.010 of the City of Gunnison Municipal Code, Definitions, is hereby amended by the addition of the following:

> "Tobacco Product" means any product that contains or is derived from tobacco and is intended to be ingested or inhaled by or applied to the skin of any individual; except that "tobacco product" does not mean any product that the Food and Drug Administration of the United States Department of Health and Human Services has approved as a tobacco use cessation product.

Section 2. Chapter 5.10 of the City of Gunnison Municipal Code, General Offenses, is hereby amended by the addition of the following section:

> Sec. 5.10.271. Unlawful Possession of Tobacco Products by Persons Under the Age of Eighteen.
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> A. No person under the age of eighteen years shall possess any tobacco product within the City of Gunnison.
>
> B. No person under the age of eighteen years shall purchase or attempt to purchase any tobacco product within the City of Gunnison.
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> C. No person shall knowingly give, sell, or distribute any tobacco product to any person who is under the age of eighteen years within the City of Gunnison.
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> D. It shall not be an offense under this section if the person under the age of eighteen years was acting at the direction of an employee of a governmental agency authorized to enforce or ensure compliance with laws relating to the prohibition of the sale of cigarettes and tobacco products to persons under the age of eighteen years.
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> E. Violation of any of the provisions of this section is a petty offense.

Section 3. Penalties and Procedures.

A. A person receiving a summons for the alleged violation of Sect. 5.10.271, shall appear in Gunnison Municipal Court with a parent or legal guardian on the date set forth on the summons. Should the minor fail to appear with a parent or legal guardian, a summons shall be issued for both the minor and the minor's parent(s) or legal guardian(s) compelling the attendance in Gunnison Municipal Court of the minor and at least one of the minor's parents or legal guardians.

B. Upon issuance of a first summons and complaint for a violation of Section 5.10.271 prior to December 31, 2011, the Municipal Court shall dismiss the charges against any person charged with a violation of Section 5.10.271 (A) if such person appears before the Municipal Court accompanied by a parent or guardian who acknowledges the issuance of said summons and complaint.

C. Upon issuance of a first summons and complaint for a violation of Section 5.10.271 after December 31, 2011, if such person appears before the Municipal Court accompanied by a parent or guardian, such person, upon conviction, shall be sentenced to participate in and complete a tobacco product education class and to pay the fees associated therewith. If such person, with the express consent of a parent or guardian, refuses to take the tobacco education class, the Court shall assess as a penalty an amount equal to the fees charged for such class.

D. Upon a second conviction, the Court shall assess a penalty of $50.00 and/or order the person so convicted to participate in the tobacco product education class a second time.

E. For a third or more conviction, the Court shall assess a penalty in the amount of $100.00.

Section 4. The provisions of this ordinance shall remain in effect until December 31, 2013, at which time this ordinance shall be deemed repealed unless extended by action of the City Council of the City of Gunnison.

Section 5. If any section of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of the ordinance. The Council of the City of Gunnison hereby declares it would have passed this ordinance, and each section thereof, irrespective of the fact that any one or more sections be declared unconstitutional.

INTRODUCED, READ, PASSED, AND ORDERED PUBLISHED this 26th day of July, 2011, on first reading, and introduced, read, and adopted on second and final reading this 9th day of August, 2011.

Mayor

SEAL:
ATTEST:

Gail A. Davidson
City Clerk

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