Council Memorandum

To: The Honorable Mayor and City Council

From: Scott Vargo, City Manager

Date: July 6, 2023

Subject: Ordinance 2216 - Repealing and Replacing Chapter 4.96 and Amending Section 8.04.880 of the City of Golden Municipal Code to Revise Business Regulations and Licensing Requirements for Nicotine and Tobacco Product Retailers and to Prohibit the Sale of Flavored Tobacco Products

Purpose of Agenda Item: At the request of Council, Staff developed an ordinance amending the City’s nicotine and tobacco regulations for review and consideration. Recommended changes include ending the sale of all flavored tobacco products, removing purchase, use and possession (PUP) penalties for tobacco products from the municipal code, while maintaining penalties where an intent to distribute remains, and creating greater alignment with state tobacco retail licensing. Additionally, it was suggested that assigning Jefferson County Public Health (JCPH) responsibility for tobacco retail licensing compliance and administrative checks would support the objectives of the ordinance. An IGA with Jefferson County Public Health is in development and will be brought for Council review separately.

Background: During the June 6, 2023, City Council study session, JCPH staff presented data and policy recommendations related to the City’s nicotine and tobacco regulations and the potential impact particularly on youth as well as other vulnerable and marginalized communities. Goals of amended polices include preventing youth from ever starting use, reducing tobacco related health disparities and support for users interested in cessation or quitting.

Summary of changes to Ordinance 2216: Proposed changes to the ordinance include a repeal and replacement of Chapter 4.96 as well as amendments to Section 8.04.880 of the City of Golden Municipal Code.

Repealed and Replaced Chapter 4.96 -

Chapter 4.96.010 – Legislative Intent: added, “to prohibit the sales of flavored tobacco products” and added, “….to reduce the impact of nicotine or tobacco product use…..”
Chapter 4.96.020 – Definitions: updated and amended language to reflect current terminology and meaning for items such as characterizing flavor, electronic smoking device, flavored tobacco products, labeling, nicotine or tobacco products, tobacco paraphernalia, etc.

Chapter 4.96.030 – License Required: eliminated redundant or obsolete language and cleaned up elements that were unclear.

Chapter (s) 4.96.040 – 4.96.100: minimal copy edits, reordering and clarification of wording.

Chapter 4.96.110 – Compliance monitoring: added, “compliance checks shall be conducted at least twice per calendar year”.

Chapter 4.96.120 – Suspension or revocation of license: minimal copy edits, reordering and clarification of wording.

Chapter 4.96.130 – Enforcement: no changes.

Chapter(s) 4.96.140 – 4.96.150: sections eliminated and moved to more appropriate place.

Section 8.04.880 Amended:

8.04.880 Underage person’s tobacco restrictions and prohibitions:
(a) definitions simplified and updated.
(b) deleted reference to purchase, use and possession penalties.
(c) no changes
(d) deleted references to fines for violations for underage users.
(e) clarified signage requirements for retailers
(f) deleted reference to illegal possession of minors
(g) no changes

Public outreach efforts: Outreach and community discussions related to the impact of nicotine and tobacco use on youth, as well as attempts at the state and federal to initiate action on flavored nicotine have been ongoing.

Fiscal impact: Fiscal impact of the ordinance changes to the City are expected to be minimal and would be the result of lost sales tax revenue on sales of flavored nicotine products. The fiscal impact of preventing the costly public health burden of youth usage are harder to measure. Data exists on the health care costs in Colorado that can specifically be attributed to tobacco totaling over $2 billion annually.

Community impact: Perhaps most importantly, the community impact would align with the stated goals of preventing youth from starting use, reducing tobacco related health
disparities and increasing support for users interested in cessation or quitting. Local retailers have expressed concerns about financial impacts to their businesses if flavored nicotine products are no longer legal to sell.

**Alternatives and recommendations:** Staff supports the repeal and replacement of Chapter 4.96 and the proposed amendments to Section 8.04.880, and recommends that Council set second reading of Ordinance 2216 for July 25, 2023.
ORDINANCE NO. 2216

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO, REPEALING AND REPLACING CHAPTER 4.96 AND AMENDING SECTION 8.04.880 OF THE CITY OF GOLDEN MUNICIPAL CODE TO REVISE BUSINESS REGULATIONS AND LICENSING REQUIREMENTS FOR NICOTINE AND TOBACCO PRODUCT RETAILERS AND TO PROHIBIT THE SALE OF FLAVORED TOBACCO PRODUCTS.

WHEREAS, the City of Golden has a substantial interest in protecting the health and safety of its residents, including protecting children under 18 years of age, referred to in this ordinance as "youth," as well as young adults under 21 years of age, from dangerous products like cigarettes, tobacco products, and nicotine products, referred to collectively herein as "tobacco products"; and

WHEREAS, use of tobacco products remains the leading cause of preventable death in the United States, killing more than 480,000 Americans each year, including 5,100 each year in Colorado; and

WHEREAS, according to a 2016 article in the Journal of the American Medical Association Internal Medicine, "State-level Cancer Mortality Attributable to Cigarette Smoking in the United States", smoking accounts for 25.7% of cancer deaths in Colorado; and

WHEREAS, according to a 2018 publication of the United States Office of the Surgeon General, "Surgeon General's Advisory on E-cigarette Use Among Youth," nicotine use can harm the part of the adolescent brain that is responsible for attention, learning, mood, and impulse control, and nicotine use can prime the brain for addiction to other drugs; and in 2018, the Surgeon General declared that electronic cigarette use among youth is an "epidemic"; and

WHEREAS, in a 2012 report entitled "Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General," the United States Office of the Surgeon General determined that menthol cigarettes and other flavored tobacco products have been shown to be "starter" tobacco products for youth and other vulnerable and targeted populations, can become habit-forming, and can lead to long-term addiction; and

WHEREAS, according to a 2013 study conducted by the United States Food and Drug Administration, "Preliminary Scientific Evolution of the Possible Public Health Effects of Menthol versus Nonmenthol Cigarettes," menthol is an appealing option for youth initiating tobacco use because it cools and numbs the throat and reduces irritation; and

WHEREAS, based on that 2013 study, the United States Food and Drug Administration has determined that menthol cigarettes lead to increased initiation of smoking among youth and young adults 18 to 24 years of age, greater addiction to tobacco products, and decreased success in smoking cessation efforts; and

WHEREAS, according to a 2021 federal centers for disease control and prevention study, "Tobacco Product Use and Associated Factors Among Middle and High School Students
– National Youth Tobacco Survey, United States, 2021", close to 40% of all high school cigarette smokers use menthol cigarettes; and

WHEREAS, a 2004 study in Nicotine and Tobacco Research, "The African Americanization of Menthol Cigarette Use in the United States," states that the tobacco product industry has targeted Black communities for decades by marketing menthol cigarette use through magazine advertising, retail promotions, and sponsorship of community and music events; and

WHEREAS, a 2020 article in Nicotine and Tobacco Research, "Banning Menthol Cigarettes: A Social Justice Issue Long Overdue," states that although only 29% of White cigarette smokers smoke menthol cigarettes, 85% of Black cigarette smokers and 50% of Hispanic cigarette smokers smoke menthol cigarettes; and

WHEREAS, a 2015 article in the Journal of the American Medical Association, "Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014," indicated that eight out of ten youth who have ever used a tobacco product first used a flavored tobacco product; and

WHEREAS, “A Report of the Surgeon General” indicated that hookah smoke is linked to many of the same adverse health effects as cigarette smoking, such as heart disease and lung, bladder, and oral cancers; and

WHEREAS, electronic cigarettes and other flavored tobacco products have been made available in a variety of kid-friendly flavors, like cotton candy, gummy candy, and pink lemonade; and

WHEREAS, cigars are sold in hundreds of flavors to mask the harsh taste of tobacco, such as cherry, brownie, and tropical flavors; and

WHEREAS, the City of Golden, Colorado, (the “City”), is a home rule municipality, organized and existing under Article XX, Section 6 of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority, Sections 2.2 and 13.1 of the City’s Charter, and as further authorized by state law, including, but not limited to, Sections 31-15-401 and 31-15-501 of the Colorado Revised Statutes, the City is authorized to adopt and enforce police power regulations in furtherance of the health, safety, and welfare of its citizens, and specifically, to make all regulations that may be necessary or expedient for the promotion of health and to license and regulate any lawful occupation or business place and to fix the amount, terms, and manner of issuing and revoking licenses issued therefor; and

WHEREAS, the health and wellbeing of youth is a priority for the City; and

WHEREAS, the City Council finds that this ordinance promotes the overall health and wellbeing of individuals and is in the best interest of the health, safety, and welfare of the public.

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:
**Section 1. Recitals Incorporated.** The recitals set forth above are hereby incorporated by reference and are adopted as findings and determinations by the City Council.

**Section 2. Chapter 4.96 Repealed and Replaced.** Chapter 4.96 of the Golden Municipal Code, “Nicotine or Tobacco Product Retailers,” is repealed in its entirety and replaced with the following:

**Chapter 4.96 NICOTINE OR TOBACCO PRODUCT RETAILERS**

**4.96.010 - Legislative intent.**

It is the intent of the City Council in enacting this chapter to prohibit the sales of Nicotine or Tobacco products to persons under 21 years of age, to prohibit the sales of Flavored Tobacco Products, to encourage responsible tobacco retailing, and to reduce the impact of Nicotine or Tobacco Product use by young people in Golden.

**4.96.020-Definitions.**

The following words and phrases, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

*Characterizing Flavor* means:

1. a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a Nicotine or Tobacco Product or any byproduct produced by the Nicotine or Tobacco Product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice; or

2. a cooling or numbing sensation in the mouth imparted by a blend of taste and smell sensations during consumption of a Nicotine or Tobacco Product;

provided, however, that a Nicotine or Tobacco Product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information.

*Consumer* means any person in the city who purchases, uses, or otherwise consumes Nicotine or Tobacco Products.

*Department* means the City of Golden Police Department, and shall also include Jefferson County, acting as agent for the city, and any person authorized by Jefferson County to enforce or administer the provisions of this chapter, including Jefferson County Public Health.

*Electronic Smoking Device* means:

a. Any battery-powered or electronic oral device that provides or delivers, or is intended to provide or deliver, an inhaled dosage of nicotine, a vapor of nicotine, a
vapor of a solution containing nicotine, a particulate or vaporized substance containing nicotine, or aerosol of a solution containing nicotine to a person for consumption, whether such device is homemade, manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pen, an electronic pipe, or an electronic hookah or any other product name or descriptor; or

b. Any battery-powered or electronic oral device 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 component, part, or accessory of a device described in a. or b. of this definition, whether or not marketed or sold separately, including refills and cartridges.

Flavored Tobacco Product means any Nicotine or Tobacco Product that imparts a Characterizing Flavor. There shall be a rebuttable presumption that a Nicotine or Tobacco Product is a Flavored Tobacco Product if a Nicotine or Tobacco Retailer, Manufacturer, or any employee or agent of a Nicotine or Tobacco Retailer or Manufacturer has:

(1) made a public statement or claim that the Nicotine or Tobacco Product imparts a Characterizing Flavor; or

(2) used text or images on the Nicotine or Tobacco Product’s Labeling or Packaging to indicate explicitly or implicitly that the Nicotine or Tobacco Product imparts a Characterizing Flavor; or

(3) taken action directed to Consumers or the public that would reasonably be expected to cause Consumers or other members of the public to believe the Nicotine or Tobacco Product imparts a Characterizing Flavor.

Labeling means written, printed, or graphic matter upon any Nicotine or Tobacco Product or any of its Packaging, or accompanying such Nicotine or Tobacco Product.

License means the Nicotine or Tobacco Product Retailer license required by this chapter.

Licensee means any person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation who owns, operates, or manages any tobacco retail establishment. Licensee does not mean the non-management employees of any tobacco retail establishment.

Licensed Premises means any area of the premises where Nicotine or Tobacco Products are authorized to be sold or dispensed to a Consumer including, but not limited to, the grounds occupied by a Licensee and any store, stand, outlet, location, vending machine, or structure where Tobacco or Nicotine Products are sold, as designated in the approved license application.
*Manufacturer* means any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a Nicotine or Tobacco Product, or a person who imports a finished Nicotine or Tobacco Product for sale or distribution into the United States.

*Minimum Legal Sales Age* means 21 years of age or older.

*Nicotine or Tobacco Product* means:

a. Any product that contains, is made of, or derived from nicotine, from any source, or tobacco, and is intended to be consumed by an individual; or

b. An Electronic Smoking Device; or

c. Any device, other than an Electronic Smoking Device, manufactured, distributed, marketed, or sold for use by an individual to consume Nicotine or Tobacco Products. The term “device” includes, without limitation, cigarettes, cigars, cigarillos, pipes, or any product that, because of its appearance, type, Packaging, or Labeling, is suitable for use and likely to be offered to, or purchased by, Consumers for consuming Nicotine or Tobacco Products; or

d. Nicotine or Tobacco Product includes any component, part, or accessory intended or reasonably expected to be used with a product or device described in a., b., or c. of this definition, whether or not sold separately.

e. Nicotine or Tobacco Product does not include any product specifically approved by the United States Food and Drug Administration as a tobacco cessation product for any of the following uses, when such product is being marketed and sold solely for such use: (1) reducing, treating, or eliminating nicotine or tobacco dependence; (2) mitigating, treating, or preventing disease; or (3) other medical purposes.

*Nicotine or Tobacco Product Retailer* means any Person who sells, offers for sale, offers to sell through advertising or otherwise, or does or offers to exchange for any form of consideration, a Nicotine or Tobacco Product to Consumers at retail.

*Nicotine or Tobacco Product Retailing* means the selling, offering for sale, or exchanging for any form of consideration, a Nicotine or Tobacco Product to Consumers at retail. This definition is without regard to the quantity of Nicotine or Tobacco Products or Tobacco or Nicotine Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

*Packaging* means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a Nicotine or Tobacco Product is sold or offered for sale to a Consumer.

*Person* means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
Retail Tobacco Business means a Person engaged primarily in the sale at retail of any Nicotine or Tobacco Product, and in which the sale of other products is less than 25 percent of gross sales receipts.

Self-Service Display means the open display or storage of Nicotine or Tobacco Products, Electronic Smoking Devices, or Tobacco or Nicotine Paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the Nicotine or Tobacco Product Retailer or an employee or agent of such retailer and a direct person-to-person transfer between the purchaser and the retailer or employee or agent of the retailer. A vending machine qualifies as a Self-Service Display.

Tobacco or Nicotine Paraphernalia means any item designed or marketed for the consumption, use, or preparation of Nicotine or Tobacco Products.

Youth-Oriented Facility means any public or private elementary school, middle school, or high school.

4.96.030 - License required.

(a) Nicotine or Tobacco Product Retailer License required.

(1) It shall be unlawful for any person to act as a Nicotine or Tobacco Product Retailer in the city without first obtaining and maintaining a valid License pursuant to this chapter for each location where Nicotine or Tobacco Product Retailing occurs.

(2) No License may be issued to authorize Nicotine or Tobacco Product Retailing anywhere other than at a fixed location that is designated in the license application and License. Nicotine or Tobacco Product Retailing from other than a fixed location is prohibited.

(3) Except as provided in this subparagraph, no License shall be issued to authorize Nicotine or Tobacco Product Retailing within 500 feet of a Youth-Oriented Facility, as measured by a straight line from the nearest point of the property line of the site of the Youth-Oriented Facility to the nearest point of the property line of the site of the premises proposed for licensure. The foregoing notwithstanding, a Nicotine or Tobacco Product Retailer operating lawfully on April 26, 2012, shall be exempt from the 500-foot prohibition set forth in this section, provided that a License for such location is issued within 30 days of the effective date of the ordinance from which this section is derived, and continuously maintained.

(4) A Licensed Premises may only have one active License at one time.

(b) Display of License. Each License shall be displayed as required by Section 4.04.020 of this Code.
4.96.040 - Regulations.

(a) Minimum Legal Sales Age. No License issued pursuant to this chapter shall authorize a Nicotine or Tobacco Product Retailer to sell a Nicotine or Tobacco Product to any person who is under the Minimum Legal Sales Age.

(b) Minimum age for persons handling Nicotine or Tobacco Products. It shall be unlawful for a Licensee to allow, permit, or require any person who is younger than the Minimum Legal Sales Age to sell, stock, retrieve, or otherwise handle Nicotine or Tobacco Products during the course of operation of the business.

(c) No unaccompanied minors permitted in Retail Tobacco Businesses. It shall be unlawful for a Retail Tobacco Business Licensee to allow or permit a person who is younger than Minimum Legal Sales Age to be admitted or remain upon the Licensed Premises, unless such person is accompanied by their parent or legal guardian. A Retail Tobacco Business Licensee shall display a warning sign as specified in this section, to be provided by the city clerk's office. The warning shall be displayed in a prominent place within the Licensed Premises that is visible to the public, and shall have a minimum height of three inches and a width of six inches, with each letter a minimum of one-half (.5) inch in height, and shall read as follows:

WARNING: It is a violation of the Golden Municipal Code for any person under twenty-one (21) years of age to be on the premises of this business unless accompanied by their parent or legal guardian.

(d) Requirements of positive identification. No Licensee shall sell or transfer a Nicotine or Tobacco Product to a person without first examining a government-issued photographic identification of the recipient to confirm that the recipient is at least the Minimum Legal Sales Age.

(f) On or after September 1, 2023 it shall be a violation of this chapter for any Nicotine or Tobacco Product Retailer located within the city or any of such Nicotine or Tobacco Product Retailer’s agents or employees to sell, distribute, or offer for sale or distribution any Flavored Tobacco Product, or to display, market, or advertise for sale any Flavored Tobacco Product within the City.

(g) Self-Service Display prohibited. It is unlawful for a Licensee to engage in Nicotine or Tobacco Product Retailing by means of a Self-Service Display except at a location in which persons under the Minimum Legal Sales Age are prohibited entry and persons are not permitted to enter such location unless the Nicotine or Tobacco Retailer, its employee, or agent verifies that the individual seeking entry into the location is the Minimum Legal Sales Age by examining the individual’s government-issued photographic identification.

(h) Signage posted. Any person who sells or offers to sell any Nicotine or Tobacco Product shall display a warning sign as specified in this section. The warning shall be
displayed in a prominent place within the Licensed Premises that is visible to the public, and shall have a minimum height of three inches and a width of six inches, with each letter a minimum of one-half (.5) inch in height, and shall read as follows:

WARNING

IT IS ILLEGAL TO SELL NICOTINE OR TOBACCO PRODUCTS TO ANY PERSON UNDER TWENTY-ONE YEARS OF AGE.

(h) City Manager regulations. The City Manager shall have the power to promulgate rules and regulations as are reasonable and necessary to implement and administer the requirements of this chapter.

4.96.050 – License application procedure.

(a) An application for a License shall be submitted and signed by an individual authorized by the Person making application for the License.

(b) An application for a License for an operation for which there is a reasonable expectation that it will meet the definition of Retail Tobacco Business shall so indicate in the application. For any License that is granted pursuant to an application indicating that a Retail Tobacco Business is anticipated on the Licensed Premises, there shall be a rebuttable presumption that the business is a Retail Tobacco Business.

(c) All license applications shall be submitted on a form supplied by the city clerk, which form shall require an applicant to provide a copy of any deed, lease, or contract reflecting the right of the applicant to possess and operate the proposed Licensed Premises.

(d) All license applications shall be accompanied by the payment in full of an application fee and all other fees as required by this Code, as established by City Council resolution. The fee shall be calculated so as to recover the cost of administration and enforcement of this chapter, including, for example, issuing a license, administering the license program, retailer education and training, retailer inspection, compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the estimated cost of the regulatory program authorized by this chapter. Fees are nonrefundable except as may be required by law.

(e) Applicants and Licensees shall inform the city clerk in writing of any change to the information submitted on an application for a License within 30 calendar days of a change, including, without limitation, a change that indicates that the Licensee is operating as a Retail Tobacco Business.

(f) No License shall be issued to any natural person under the Minimum Legal Sales Age at time of application.

(g) A Person who has had a License revoked may not apply for a new License for a one-year period after the effective date of such revocation.
4.96.060 - Issuance of Nicotine or Tobacco Product Retailer License.

(a) Upon the receipt of a complete application for a License and all required fees, the city clerk shall issue a License within 30 days, which period may be extended by the city clerk for good cause, unless credible evidence indicates that one or more of the following bases for denial exists:

1. The information presented in the application is incomplete or objectively verifiable as inaccurate or false;

2. The applicant seeks a license for a location prohibited by this chapter;

3. The applicant seeks a license for a location that is not appropriately zoned for the proposed use;

4. The proposed location for the requested license is not otherwise in compliance with all city, state, or federal laws that pertain to the proposed use; or

5. The applicant is not qualified to hold the requested license under the provisions of this chapter.

(b) If the city clerk denies the application for issuance of the license, the city clerk shall notify the applicant in writing by regular mail, postage prepaid, to the address shown in the application. The notice shall include the grounds for denial. Notice is deemed to have been properly given upon mailing.

4.96.070 - Appeal of denial of issuance of license.

(a) An applicant has the right to appeal the city clerk's denial of an application to a hearing officer that shall be appointed by the city council by resolution. Such appeal shall be initiated by filing a written request with the city clerk within 20 calendar days of the date of the notice of denial of the issuance of a License.

(b) The applicant's failure to timely appeal the decision of the city clerk is a waiver of the applicant's right to contest the denial of the issuance of a License.

(c) The appeal, including any right to further appeals, shall be conducted and controlled by the provisions of chapter 2.35 of the Golden Municipal Code.

4.96.080 - License terms; renewal; expiration.

(a) Term. A License shall be valid for a term of one year. A License is invalid if the appropriate fee has not been timely paid in full or if the term of the License has expired.
(b) **Renewal of License.** A Licensee shall apply for the renewal of the License and submit the renewal License fee no later than 30 calendar days prior to expiration of the existing term. The city clerk shall renew the License prior to the end of the term, provided that the renewal application and fee were timely submitted, and the city clerk is not aware of any fact that would have prevented issuance of the original License.

(c) **Expiration of License.** A License that is not timely renewed shall expire at the end of its term. The failure to timely obtain a renewal of a License requires submission of a new application. There shall be no sale of any Nicotine or Tobacco Products after the License expiration date until a new License is issued and in effect.

4.96.090 - **License non-transferable.**

(a) A License shall not be transferred from one Person to another or from one location to another.

(b) If a License has been issued to a husband and wife, or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new License for the remainder of the term of that License. All rights and privileges granted under the original License shall continue in full force and effect as to such survivors for the balance of the term of the License. Surviving spouses or partners that desire to continue as a Licensee shall be required to apply for a new License upon the expiration of the term of the License maintained after the death of a spouse or partner.

4.96.100 - **Compliance monitoring.**

(a) Compliance monitoring of this chapter shall be by the Department, as the Department deems appropriate.

(b) The Department shall have the discretion to consider previous compliance history of a Licensee in determining how frequently to conduct compliance checks of a Licensee.

(c) Nothing in this paragraph shall create a right of action in any Licensee or other person against the city, the Department, or their agents and officers.

(d) Compliance checks shall be conducted at least twice per calendar year to allow the Department to determine, at a minimum, if the Nicotine or Tobacco Product Retailer is conducting business in a manner that complies with laws regulating access to Nicotine or Tobacco Products. When the Department deems appropriate, the compliance checks may determine compliance with other laws applicable to Nicotine or Tobacco Products.
(e) All Licensed Premises with a compliance or inspection violation shall be re-checked for compliance within forty-five (45) days of a violation.

4.96.110 - Suspension or revocation of license.

(a) The following shall be grounds for suspension or revocation of a Licensee's License(s):

(1) A violation by a Licensee or a Licensee's officers, agents, or employees of any of the provisions of this chapter, or any laws of the State of Colorado or ordinances of the City of Golden relating to the sale or furnishing of Nicotine or Tobacco Products, or the storage or display of Nicotine or Tobacco Products, including, without limitation, Title 44, Article 7 of the Colorado Revised Statutes, Section 18-13-121 of the Colorado Revised Statutes, and Section 8.04.880 of the Golden Municipal Code;

(2) Violations of any conditions imposed by the city clerk or hearing officer 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 right to possession to the Licensed Premises;

(5) Fraud, misrepresentation, or an objectively verifiable false statement of material fact contained in the original or renewal license application.

(b) The city council shall appoint a hearing officer to hear all actions relating to the suspension or revocation of Licenses pursuant to this chapter. The hearing officer shall have the authority to impose remedial sanctions for violations.

(c) The Department shall commence suspension or revocation proceedings by petitioning the hearing officer to issue an order to the Licensee to show cause why the Licensee's License(s) should not be suspended or revoked. The hearing officer shall issue such an order to show cause if the petition demonstrates that probable cause exists to determine that one or more grounds exist pursuant to subsection (a) to suspend or revoke the Licensee's License. The order to show cause shall set the matter for a public hearing before the hearing officer.

(d) The city clerk shall give notice of the public hearing no later than 21 calendar days prior to the hearing by mailing the same in writing to the Licensee at the address contained in the Licensee's License. At the hearing, the Licensee shall have the opportunity to be heard, to present evidence and witnesses, and to cross examine witnesses presented by the Department. The hearing officer shall have the power to administer oaths and issue subpoenas to require the presence of persons and the
production of papers, books, and records necessary to the determination of any hearing that the hearing officer is authorized to conduct. The standard of proof at such hearings shall be a preponderance of the evidence. The burden of proof shall be upon the Department.

(e) In determining whether a License should be suspended or revoked, and in determining whether to impose conditions in the event of a suspension, the hearing officer shall consider the following factors:

(1) The nature and circumstances of the violation;
(2) Corrective action, if any, taken by the Licensee;
(3) Prior violations, if any, by the Licensee;
(4) The likelihood of recurrence of the violation;
(5) Whether the violation was willful;
(6) Previous sanctions, if any, imposed on the Licensee.

(f) The hearing officer shall consider the following non-binding guidelines in determining whether to suspend or revoke a License and, in the case of a suspension, the length of the suspension. The purpose of these guidelines is to facilitate consistent treatment of violations of this chapter. The actual sanction imposed upon a Licensee for any violation may vary from the guidelines when warranted by the specific facts and circumstances of the case. The decision of the hearing officer with respect to the suspension or revocation of a License shall constitute a final administrative action by the City of Golden, subject to judicial review to the municipal court pursuant to section 2.35.050 of the Golden Municipal Code.

(1) For a first offense, suspension for seven (7) days.
(2) For a second offense within a two-year period, suspension for thirty (30) days.
(3) For a third or subsequent offense within a two-year period, revocation of the License.

4.96.120 - Enforcement.

(a) The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.
(b) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter is unlawful and shall cause the offender to be subject to the general penalty provisions of the Golden Municipal Code.

(c) Violations of this chapter are hereby declared to be public nuisances.

(d) In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the city attorney, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

(e) All provisions of this chapter shall be enforced by the Department.

Section 3. Section 8.04.880 Amended. Section 8.04.880 of the Golden Municipal Code, “Underage person’s tobacco restrictions and prohibitions,” is hereby amended to read as follows, with additions shown in underline and deletions shown in strikethrough.

8.04.880 Underage person's tobacco restrictions and prohibitions.

(a) Definitions. For purposes of this section, the following words shall mean as defined have the following meanings unless the context specifies otherwise:

(1) Consume means to use, to possess, to inhale, to chew, to dissolve, to absorb, to be applied to the skin of, to heat, to sniff, or to ingest by any other means.

(2) Electronic smoking device means:

a. Any battery powered or electronic oral device that provides or delivers, or is intended to provide or deliver, an inhaled dosage of nicotine, a vapor of nicotine, a vapor of a solution containing nicotine, a particulate or vaporized substance containing nicotine, or aerosol of a solution containing nicotine to a person for consumption, whether such device is homemade, manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pen, an electronic pipe, or an electronic hookah or any other product name or descriptor; or

b. Any battery powered or electronic oral device 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; and

c. Any product intended for use with an electronic smoking device, including refills, cartridges and component part of a product, whether or not marketed or sold separately has the meaning provided in Section 4.96.020 of this Code.

(3) Nicotine product or tobacco product means:

a. Any product that contains, is made of, or derived from nicotine or tobacco, and is intended to be consumed by an individual; or

b. An electronic smoking device; or
e.—Any device, other than an electronic smoking device, manufactured, distributed, marketed or sold for use by an individual to consume nicotine or tobacco products. The term device includes without limitation cigarettes, cigars, cigarillos, pipes, or any product that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers for making cigarettes.

d.—Nicotine product or tobacco product does not include any product specifically approved by the United States Food and Drug Administration as a tobacco cessation product, for use in reducing, treating or eliminating nicotine or tobacco dependence, for use in mitigating, treating, or preventing disease, or for other medical purposes, when such product(s) is being marketed and sold solely for such an approved purpose has the meaning provided in Section 4.96.020 of this Code.

(4) Vapor product means any product intended for use with an electronic smoking device, including refills, cartridges and component parts of a product, whether or not marketed or sold separately, which provides or delivers, or is intended to provide or deliver, a vapor, a vapor of a solution, a particulate or vaporized substance, or aerosol of a solution, even if marketed as nicotine-free.

(b) It shall be unlawful for anyone under the age of 21 years to purchase, attempt to purchase, or consume any nicotine product or tobacco product or vapor product.

(c) It shall be unlawful for any person to knowingly furnish or offer to furnish, or possess with the intent to furnish or offer to furnish, to any person who is under 21 years of age, whether by gift, sale, or any other means, any nicotine product or tobacco product or vapor product.

(d) Violations of subsection (b) shall be civil in nature, subject to a minimum fine of $100.00 and a maximum fine of $400.00; except that nothing herein shall be deemed to restrict the municipal court from imposing upon a person, in lieu of a fine, a requirement to participate in a tobacco or vaping education program.

(ec) It shall be unlawful for Aany person who sells, offers to sell, or possesses with intent to sell or offer for sale any nicotine product or tobacco product shall to fail to display a warning sign as specified in this section required by Section 4.96.040 of this Code. The warning shall be displayed in a prominent place within the establishment, and shall have a minimum height of three inches and a width of six inches, and shall read as follows:

WARNING
IT IS ILLEGAL FOR ANY PERSON UNDER TWENTY-ONE YEARS OF AGE TO PURCHASE NICOTINE OR TOBACCO PRODUCTS.

(f) That any person under the age of 21 is/was in possession of any package or container with labeling indicating that such contains nicotine or tobacco products shall be prima facie evidence of a violation of subsections (b) and (c) herein.

(gd) It shall be unlawful for any person who sells, dispenses, distributes, or offers to sell, dispense or distribute any tobacco product or nicotine product to store, display, or sell
such tobacco or nicotine products in any area or means that is accessible for use by the public without assistance from the seller of such goods or products. This subsection shall not be construed to preclude or prohibit the storage or display of tobacco or nicotine products in an area viewable by the public so long as such items are not accessible to the public without assistance from the seller.

(e) All provisions of this Section 8.04.880 may be enforced by either the City of Golden Police Department or Jefferson County, acting as agent for the city, and any person authorized by Jefferson County to enforce this section, including Jefferson County Public Health.

Section 4. 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 City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 5. Repealer. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 6. The repeal or modification of any provision of the Municipal Code of the City of Golden by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 7. Safety. This ordinance is deemed necessary for the protection of health, welfare, and safety of the community.

Section 8. Codification Amendments. The codifier of the City’s Municipal Code, Municode, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this ordinance within the Golden Municipal Code.

Section 9. Effective Date. This ordinance shall become effective ____________________.

READ, PASSED AND ADOPTED AS AN ORDINANCE ON SECOND READING, AT A
REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO,

____________________________________
Laura M. Weinberg
Mayor

ATTEST:

____________________________________
Monica S. Mendoza, CMC
City Clerk

APPROVED AS TO FORM:

____________________________________
Kathie B. Guckenberger
City Attorney

I, Monica S. Mendoza, City Clerk of the City of Golden, Colorado, do hereby certify that the
foregoing is a true copy of a certain proposed ordinance introduced and read before the City
Council of the City of Golden at a regular meeting thereof held on the 11th day of
July, 2023, and ordered by said City Council to be published as the law provides, and that a
public hearing is declared for the 25th day of July, 2023, at 6:30 p.m. at City Hall, 911 10th Street,
Golden.

ATTEST:
MONICA S. MENDOZA
Monica S. Mendoza, City Clerk of the City of Golden, Colorado