

Introduced by Treece

First Reading 2-4-19

Second Reading 2-18-19

Ordinance No. 023792

Council Bill No. B 40-19 A

**AN ORDINANCE**

amending Chapter 11 of the City Code as it relates to the sale of tobacco, alternative nicotine products and vapor products and establishing a tobacco retailer license; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. Chapter 11 of the Code of Ordinances of the City of Columbia, Missouri, is hereby amended as follows:

Material to be deleted in ~~strikeout~~; material to be added underlined.

Secs. 11-297—11-310-309. Reserved.

**ARTICLE X. SALE OF TOBACCO, ALTERNATIVE NICOTINE PRODUCTS AND VAPOR PRODUCTS; ESTABLISHING A TOBACCO RETAILER LICENSE TO MINORS**

Sec. 11-311-310. Definitions ~~Sales of tobacco products, alternative nicotine products and vapor products to minors.~~

(a) *Definitions.* For the purposes of this section, the following terms shall have the meanings designated:

- (1) *Alternative nicotine product* shall mean any non-combustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. Alternative nicotine product does not include any vapor product, tobacco product or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.
- (2) *Arm's length transaction* shall mean a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two (2) informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies

or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this article is not an arm's length transaction.

- (3) Person shall mean any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- (4) Smokeless tobacco shall mean any tobacco products that are suitable for dipping or chewing, such as snuff, chewing tobacco or dipping tobacco, but does not include alternative nicotine products or vapor products.
- (3-5) Tobacco product paraphernalia shall mean any object used, intended for use, or designed for use in inhaling, ingesting or otherwise introducing tobacco products into the human body and shall include, but not be limited to, cigarette wrapping papers and pipes made for smoking tobacco products.
- (2-6) Tobacco products shall mean any substance containing tobacco leaf, including, but not limited to, cigars, cigarettes, pipe tobacco and smokeless tobacco. "Smokeless tobacco" means any tobacco products that are suitable for dipping or chewing, such as snuff, chewing tobacco or dipping tobacco, but does not include alternative nicotine products or vapor products.
- (7) Tobacco retailer shall mean any person who sells, offers for sale, or offers to exchange for any form of consideration tobacco products, tobacco product paraphernalia, alternative nicotine products or vapor products. This definition is without regard to the quantity of tobacco products, tobacco paraphernalia, alternative nicotine products or vapor products sold, offered for sale, exchanged, or offered for exchange.
- (8) Tobacco retailer license shall mean the license issued pursuant to this article that authorizes the sale or exchange of tobacco products, tobacco product paraphernalia, alternative nicotine products or vapor products at a certain fixed location by a certain tobacco retailer.
- (9) Tobacco retailing shall mean the doing of any business as a tobacco retailer.
- (5-10) Vapor product shall mean any non-combustible product with or without nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical or mechanical means, regardless of shape or size, which can be used to produce vapor or aerosol with or without nicotine in a solution or other form. Vapor product includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of nicotine in a liquid solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. Vapor product does not include any alternative nicotine

product or tobacco product. Vapor product does not include drugs, devices or combination products authorized for sale as a cessation device by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

~~(6-11) *Vending machine* shall mean any mechanical, electric or electronic, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco-products.~~

~~(b) *Prohibitions.* It shall be unlawful for any person to sell tobacco products or tobacco product paraphernalia, alternative nicotine products or vapor products to a minor.~~

~~(c) *Warning signs.* Warning signs concerning sales of the products set forth in section 11-311(b) to minors shall be plainly visible at every display from which such products are sold. Such signs shall:~~

~~(1) Contain in red lettering at least one-half inch high on a white background "IT IS A VIOLATION OF THE LAW FOR TOBACCO PRODUCTS, TOBACCO PRODUCT PARAPHERNALIA, ALTERNATIVE NICOTINE PRODUCTS OR VAPOR PRODUCTS TO BE SOLD TO ANY PERSON UNDER THE AGE OF 21," and~~

~~(2) Include a depiction of a pack of cigarettes at least two (2) inches high defaced by a red diagonal diameter of a surrounding red circle.~~

~~(d) *Vending machines; exceptions:* It shall be unlawful to sell tobacco products, tobacco product paraphernalia, alternative nicotine products or vapor products through vending machines except:~~

~~(1) In factories, businesses, offices or other places not open to the general public, and~~

~~(2) In places to which persons under the age of twenty-one (21) are not permitted access.~~

~~(e) *Signs on vending machines.* It shall be unlawful to offer tobacco products, tobacco product paraphernalia, alternative nicotine products or vapor products for sale through a vending machine unless the vending machine contains thereon the warning signs referred to in paragraph (c) and the owner of the vending machine or person leasing the machine does not knowingly permit the sale of such products to minors.~~

~~(f) *Violations.* Any person found guilty of violating the provisions of this section shall be deemed guilty of an infraction. The penalty for violation of the provisions of this section shall be:~~

- (1) ~~A fine of one hundred dollars (\$100.00) for the first violation within a two-year period.~~
- (2) ~~A fine of two hundred fifty dollars (\$250.00) for the second violation within a two-year period.~~
- (3) ~~A fine of five hundred dollars (\$500.00) for the third violation within a two-year period.~~
- (4) ~~A fine of one thousand dollars (\$1,000.00) for any additional violation within a two-year period.~~

Sec. 11-311. Tobacco retailer license required; term; renewal.

(a) *Tobacco retailer license required.* It shall be unlawful for any person to conduct business as a tobacco retailer or engage in tobacco retailing without first having obtained a license therefor as required by this article.

(b) *Multiple places of business.* Any person conducting business as a tobacco retailer or engaging in tobacco retailing at more than one location in the city shall obtain a separate, distinct tobacco retailer license for each individual location.

(c) *Business license required.* A valid business license issued pursuant to chapter 13, article II of this code shall be a condition precedent to the issuance of a license under this article.

(d) *Term.* Any license, or renewal thereof, issued hereunder shall be effective as of the date of its issuance and shall expire the next June thirtieth.

(e) *Renewal of license.* The term of a renewed tobacco retailer license is one (1) year, commencing on July 1; provided however, if the business services administrator determines that there is good reason not to issue a license for the full one (1) year period, the business services administrator may issue a license for a shorter period of time. Each tobacco retailer shall apply for the renewal a tobacco retailer license no later than thirty (30) days prior to expiration of the prior license.

(f) *Expiration of license.* A tobacco retailer license that is not timely renewed shall expire at the end of its term. To apply for reinstatement of a license not timely renewed, the person must:

- (1) *Submit the application renewal form; and*
- (2) *Submit a signed affidavit affirming that the applicant:*

- (i) Has not sold and will not sell any tobacco product, alternative nicotine product, vapor product or tobacco product paraphernalia after the license expiration date and before the license is renewed; and
- (ii) Has paid all outstanding fines and resolved any undisputed outstanding violations of these regulations before seeking renewal of the license.

Sec. 11-312. Application procedure.

(a) *Submittal.* Any person desiring a license under this article shall apply to the business services administrator in writing and under oath. Such application shall be submitted in the name of the person and signed by an authorized agent thereof. If the application is made on behalf of a partnership, the names and addresses of all partners together with the name and address of the managing officer or employee who is to be actively engaged in the control and management of the premises for which the license is sought shall be included on the application. If the application is made on behalf of a corporation, the names and addresses of the officers and directors and stockholders who hold ten (10) percent or more of the capital stock together with the name and address of the managing officer or employee who is to be actively engaged in the control and management of the premises for which the license is sought shall be included on the application. If the application is made on behalf of a limited liability company, the names and addresses of the members and managers together with the name and address of the managing officer or employee who is to be actively engaged in the control and management of the premises for which the license is sought shall be included on the application.

(b) *Contents.* An application for a tobacco retailer license shall be made upon a form provided by the business services administrator and shall require the disclosure of all information necessary to comply with the requirements of this article, including whether or not the applicant or any agent of the applicant has been found to have violated any of the requirements of this article within the previous five (5) years, together with any other information which the business services administrator shall find to be reasonably necessary to the fair administration of this article.

(c) *Changes and corrections.* An applicant or previously licensed tobacco retailer shall inform the business services administrator, in writing, of any change in the information submitted on an application for a tobacco retailer license within thirty (30) days of such change. Such requirement shall expressly apply to the name and address of the managing officer or employee who is to be actively engaged in the control and management of the premises for which the license is issued.

Sec. 11-313. Issuance of license.

Upon the receipt of a complete application for a tobacco retailer license, the business services administrator shall issue a license upon a finding that the requirements

of this article have been met. The provision of incomplete, inaccurate, false or misleading information shall be grounds for denial or revocation. In the case of a renewal, failure to operate the business in accordance with the requirements of this article shall be grounds for denial or revocation.

Sec. 11-314. License not transferable.

(a) A tobacco retailer license may not be transferred from one person to another or from one location to another. A new tobacco retailer license is required whenever a tobacco retailer location has a change in ownership.

(b) Notwithstanding any other provision of this article, a prior violation or license revocation at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:

- (1) The location has been transferred to a new person in an arm's length transaction; and
- (2) The new person provides the city with clear and convincing evidence that the new person has acquired, or is acquiring, the location in an arm's length transaction.

Sec. 11-315. Denial of application; appeal.

(a) Denial. When a license under this article is denied, the business services administrator shall send a letter to the applicant stating why the license was denied and how to appeal the denial. The letter may be hand delivered or sent by first class mail. If mailed, the letter shall be presumed received three (3) days after it was mailed, unless returned.

(b) Appeal by applicant. The applicant may appeal the denial to the tobacco retailer license review board by mailing or delivering a written notice of appeal to the director of finance and a copy to the business services administrator. The notice of appeal must be received by the director of finance no later than ten (10) days after the applicant received the letter of denial. The applicant may submit to the director of finance a position statement explaining why applicant believes the license should be granted. The business services administrator may also submit to the director a position statement explaining why the administrator believes the denial should be upheld.

Sec. 11-316. Sale of tobacco products, alternative nicotine products and vapor products to persons under the age of twenty-one (21).

(a) Prohibitions. It shall be unlawful for any person to sell tobacco products, tobacco product paraphernalia, alternative nicotine products or vapor products to a person under the age of twenty-one (21).

(b) *Warning signs.* Warning signs concerning sales of the products set forth in this article to persons under the age of twenty-one (21) shall be plainly visible at every display from which such products are sold. Such signs shall:

- (1) Contain in red lettering at least one-half inch high on a white background "IT IS A VIOLATION OF THE LAW FOR TOBACCO PRODUCTS, TOBACCO PRODUCT PARAPHERNALIA, ALTERNATIVE NICOTINE PRODUCTS OR VAPOR PRODUCTS TO BE SOLD TO ANY PERSON UNDER THE AGE OF 21," and
- (2) Include a depiction of a pack of cigarettes at least two (2) inches high defaced by a red diagonal diameter of a surrounding red circle.

(c) *Vending machines; exceptions:* It shall be unlawful to sell tobacco products, tobacco product paraphernalia, alternative nicotine products or vapor products through vending machines except:

- (1) In factories, businesses, offices or other places not open to the general public, and
- (2) In places to which persons under the age of twenty-one (21) are not permitted access.

(d) *Signs on vending machines.* It shall be unlawful to offer tobacco products, tobacco product paraphernalia, alternative nicotine products or vapor products for sale through a vending machine unless the vending machine contains thereon the warning signs referred to in this section and the owner of the vending machine or person leasing the machine does not knowingly permit the sale of such products to persons under the age of twenty-one (21).

Sec. 11-317. Duties of licensed tobacco retailer.

In conducting business on the licensed premises, a licensee and the licensee's agents and employees shall comply with the standards of conduct set forth in this section. In addition to any other enforcement mechanism or penalty for violation of the standards set forth herein, the standards of conduct may be considered in determining whether a license under this article should be renewed, suspended or revoked.

(a) *Lawful business operation.* A tobacco retailer shall not violate any local, state or federal law applicable to the sale of tobacco products, tobacco product paraphernalia, alternative nicotine products or vapor products or tobacco retailing while conducting business as a tobacco retailer.

(b) *Display of license.* A tobacco retailer shall prominently display, in a publicly visible location, a physical copy of its license at each licensed location.

(c) *Positive identification required.* A tobacco retailer shall not sell or transfer tobacco products, tobacco product paraphernalia, alternative nicotine products or vapor products to any person who appears to be under the age of thirty (30) years without first examining the identification of the customer to confirm that the customer is at least the minimum age required to purchase tobacco products, tobacco product paraphernalia, alternative nicotine products or vapor products within the city.

(d) *Cooperation with law enforcement.* A tobacco retailer shall cooperate fully with law enforcement authorities during an investigation of an illegal or violent act committed on the premises.

(e) *Display of advertising without a license.* A tobacco retailer shall not display any advertising relating to tobacco products, tobacco product paraphernalia, alternative nicotine products or vapor products promoting the sale and distribution of such products that could lead a reasonable consumer to believe that such products may be obtained at that location without possessing a valid license to engage in business as a tobacco retailer at the time such advertising is displayed. For purposes of this section, the display of such advertising without a valid license authorizing the sale thereof shall be deemed "false and misleading advertising."

(f) *Display of products without a license.* A tobacco retailer shall not display any tobacco products, tobacco product paraphernalia, alternative nicotine products or vapor products in the public view without possessing a valid license to engage in business as a tobacco retailer at the time such products are displayed.

(g) *Inspection.* A tobacco retailer shall permit all reasonable inspections of the business and examination of the business records by the business services administrator necessary or incidental to ensure compliance with the licensing requirements set forth in this article.

(h) *Cease operations.* A tobacco retailer shall refrain from sale of tobacco products, tobacco product paraphernalia, alternative nicotine products or vapor products after expiration of the license and during any period in which the license is revoked or suspended.

Sec. 11-318. Inspection and right of entry.

To the greatest extent permissible by law, the city shall have the right to enter and inspect the areas of the tobacco retailer premises which are open to the public or utilized by customers for the purpose of ensuring compliance with these regulations. The city may enter and inspect non-public areas, provided that any such entry and inspection shall be conducted in a reasonable manner whenever there is reason to suspect a violation of any of the provisions of the tobacco retailer regulations and licensing requirements. If the licensee refuses permission to enter, inspect or investigate the establishment, the city may seek an inspection warrant.



Sec. 11-319. Public nuisance.

It shall constitute a public nuisance for any person to operate a business in violation of this article.

Sec. 11-320. Penalty.

Any person found guilty of violating the provisions of this article shall be deemed guilty of an infraction. In addition to any other remedies allowed by law, the penalty for violation of the provisions of this section shall be not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000.00).

Sec. 11-321. Suspension or revocation of license; appeal.

(a) *Suspension or revocation of license for violation.* In addition to any other penalty authorized by law, a tobacco retailer license may be suspended or revoked by the business services administrator upon a finding that the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of this article. Evidence of any violation of state or federal law relating to the sale of tobacco products, tobacco product paraphernalia, alternative nicotine products or vapor products may be used as prima facie evidence of a violation of this article.

(b) *Appeal of suspension or revocation.* An appeal of a decision of the business services administrator suspending or revoking a tobacco retailer license may be filed with the tobacco retailer license review board by mailing or delivering a written notice of appeal to the director of finance with a copy to the business services administrator. The notice of appeal must be received by the director of finance no later than ten (10) days after the applicant received the notice of suspension or revocation. The appellant may submit to the director of finance a position statement explaining why appellant believes the license should not be suspended or revoked. The business services administrator may also submit to the director a position statement explaining why the administrator believes the license should be suspended or revoked.

Sec. 11-322. Tobacco retailer license review board.

(a) *Establishment; composition of board.* A three-member tobacco retailer license review board is hereby established consisting of the director of finance, the director of public health and human services and a citizen member appointed by the city council to serve a three (3) year term. The tobacco retailer license review board may adopt rules and procedures that are consistent with this code and state statutes.

(b) *Review of license denial, suspension or revocation.* The director of finance, after receiving an appeal from a license denial, suspension or revocation, shall schedule a meeting of the tobacco retailer license review board. Before the meeting, the board members shall be provided with copies of the letter of denial, suspension or revocation, the notice of appeal and any documentation and position statements provided by the business

services administrator and the applicant pertaining to the action. The board may allow the business services administrator and the applicant or the applicant's representative to explain their positions to the board at the meeting. The board may either affirm the action taken by the business services administrator or direct the business services administrator to grant or reinstate the license. The license, in the board's discretion, may be for less than the full period of time ending on June 30. If the board affirms the action taken by the business services administrator, it shall set forth the grounds for denial, revocation or suspension in a letter to the applicant. The letter shall be hand delivered or sent by first class mail. A mailed letter shall be presumed received three (3) days after it was mailed.

(c) *Judicial review.* A decision of the tobacco retailer license review board may be appealed by the applicant by filing a petition for a writ of certiorari with the Circuit Court of Boone County within thirty (30) days of receiving the determination letter from the tobacco retailer license review board. The petition shall set forth with particularity the grounds for review. The court may allow a writ of certiorari directed to the tobacco retailer license review board to review the record and decision of the board. The writ shall prescribe the time within which a return must be made and served upon the relator's attorney, which shall be at least ten (10) days from issuance of the writ and may be extended by the court.

Sec. 11-323. Separate offense; cumulative remedies.

(a) Any person who violates any provision of the tobacco retailer regulations or licensing requirements is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. In addition, each individual retail sale of tobacco products, tobacco paraphernalia, alternative nicotine product and/or vapor product shall constitute a separate violation of this article.

(b) The remedies provided in these regulations shall be cumulative. Any administrative action hereunder shall not prejudice or affect any other action, civil or criminal, for the maintenance of any such violation.

SECTION 2. *Severability clause.* It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

SECTION 3. This ordinance shall be in full force and effect from and after its passage.

PASSED this 13<sup>th</sup> day of February, 2019.

ATTEST:

  
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
Mayor and Presiding Officer

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Counselor