

AN ORDINANCE OF THE CITY OF CLEVER, MISSOURI, AMENDING TITLE II HEALTH AND PUBLIC SAFTY; ARTICLE XIII

An Ordinance of the City of Clever, County of Christian, State of Missouri to amend Article XIII: Offenses Concerning Tobacco, Alternative Nicotine Products or Vapor Products.

WHEREAS: The Federal Food, Drug, and Cosmetic Act of 1938, 21 U.S.C. §§ 387f (2019) establishes the minimum standards for the sale of tobacco products.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF AND FOR THE CITY OF CLEVER, COUNTY OF CHRISTIAN, STATE OF MISSOURI, AS FOLLOWS:

SECTION I: All parts of Article XIII in conflict with this ordinance are hereby amended or repealed.

SECTION II: DEFINITIONS.

For purposes of this Article, the following definitions shall apply:

ALTERNATIVE NICOTINE PRODUCT — 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.

CENTER OF YOUTH ACTIVITIES — Any playground, school or other facility, when such facility is being used primarily by persons under the age of eighteen (18) for recreational, educational or other purposes.

DISTRIBUTE — A conveyance to the public by sale, barter, gift or sample.

PROOF OF AGE — A driver's license or other generally accepted means of identification that contains a picture of the individual and appears on its face to be valid.

ROLLING PAPERS — Paper designed, manufactured, marketed, or sold for use primarily as a wrapping or enclosure for tobacco which enables a person to roll loose tobacco into a smokeable cigarette.

SAMPLE — A tobacco product, alternative nicotine product or vapor product distributed to members of the general public at no cost or at nominal cost for product promotional purposes.

SAMPLING — The distribution to members of the general public of tobacco product, alternative nicotine product or vapor product samples.

TOBACCO PRODUCTS — Any substance containing tobacco leaf including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco, but does not include alternative nicotine products or vapor products.

VAPOR PRODUCT — Any non-combustible product containing 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 from 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 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.

VENDING MACHINE — Any mechanical, electric or electronic self-service device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco products, alternative nicotine products or vapor products.

SECTION III: NO TOBACCO SALES TO PERSONS UNDER 21 — ALTERNATIVE NICOTINE PRODUCTS, VAPOR PRODUCTS AND NICOTINE LIQUID CONTAINERS.

- A. Any person or entity who sells tobacco products, alternative nicotine products, or vapor products shall deny the sale of such tobacco products to any person who is less than twenty-one (21) years of age.
- B. Any person or entity who sells or distributes tobacco products, alternative nicotine products, or vapor products by mail or through the Internet in this State in violation of Subsection (A) of this Section shall be assessed a fine of two hundred fifty dollars (\$250.00) for the first violation and five hundred dollars (\$500.00) for each subsequent violation.
- C. Alternative nicotine products and vapor products shall only be sold to persons twenty-one (21) years of age or older, shall be subject to local and State sales tax, but shall not be otherwise taxed or regulated as tobacco products.
- D. *Nicotine Liquid Containers — Regulations.*
 - 1. Any nicotine liquid container that is sold at retail in this State shall satisfy the child-resistant effectiveness standards set forth in 16 CFR 1700.15(b) as in effect on the effective date of this Section when tested in accordance with the method described in 16 CFR 1700.20 as in effect on the effective date of this Section.
 - 2. For the purposes of this Subsection, "nicotine liquid container" shall mean a bottle or other container of liquid or other substance containing nicotine if the liquid or substance is sold, marketed, or intended for use in a vapor product. A "nicotine liquid container" shall not include a liquid or other substance containing nicotine in a cartridge that is sold, marketed, or intended for use in a vapor product, provided that such cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer.
 - 3. Any person who engages in retail sales of liquid nicotine containers in this State in violation of this Subsection shall be assessed a fine of two hundred fifty dollars (\$250.00) for the first violation and five hundred dollars (\$500.00) for each subsequent violation.

4. The Department of Health and Senior Services may adopt rules necessary to carry out the provisions of this Subsection. Any rule or portion of a rule, as that term is defined in Section 536.010, RSMo., that is created under the authority delegated in that Section shall become effective only if it complies with and is subject to all of the provisions of Chapter 536, RSMo., and, if applicable, Section 536.028, RSMo. This Section and Chapter 536, RSMo., are non-severable, and if any of the powers vested with the General Assembly under Chapter 536, RSMo., to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2015, shall be invalid and void.
5. The provisions of this Subsection and any rules adopted hereunder shall be null, void, and of no force and effect upon the effective date of the final regulations issued by the Federal Food and Drug Administration or from any other Federal agency if such regulations mandate child-resistant effectiveness standards for nicotine liquid containers.

SECTION IV: UNLAWFUL TO SELL OR DISTRIBUTE TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS OR VAPOR PRODUCTS TO PERSONS UNDER 21 — VENDING MACHINE REQUIREMENTS.

- A. It shall be unlawful for any person to sell, provide or distribute tobacco products, alternative nicotine products or vapor products to persons under twenty-one (21) years of age.
- B. All vending machines that dispense tobacco products, alternative nicotine products or vapor products shall be located within the unobstructed line of sight and under the direct supervision of an adult responsible for preventing persons less than twenty-one (21) years of age from purchasing any tobacco product, alternative nicotine product or vapor product from such machine or shall be equipped with a lock-out device to prevent the machines from being operated until the person responsible for monitoring sales from the machines disables the lock. Such locking device shall be of a design that prevents it from being left in an unlocked condition and which will allow only a single sale when activated. A locking device shall not be required on machines that are located in areas where persons less than twenty-one (21) years of age are not permitted or prohibited by law. An owner of an establishment whose vending machine is not in compliance with the provisions of this Subsection shall be subject to the penalties contained in Subsection (D) of this Section. A determination of non-compliance may be made by a local law enforcement agency or the Division of Alcohol and Tobacco Control. Nothing in this Section shall apply to a vending machine if located in a factory, private club, or other location not generally accessible to the general public.
- C. No person or entity shall sell, provide or distribute any tobacco product, alternative nicotine product or vapor product or rolling papers to any person under twenty-one (21) or sell any individual cigarettes to any person in this State. This Subsection shall not apply to the distribution by family members on property that is not open to the public.
- D. Any person, including, but not limited to, a salesclerk, owner or operator, who violates Subsection (A), (B) or (C) of this Section or Section VII of this Article shall be penalized as follows:
 1. For the first offense, twenty-five dollars (\$25.00).
 2. For the second offense, one hundred dollars (\$100.00); and

3. For a third and subsequent offense, two hundred fifty dollars (\$250.00).
- E. Any owner of the establishment where tobacco products, alternative nicotine products or vapor products are available for sale who violates Subsection (C) of this Section shall not be penalized pursuant to this Section if such person documents the following:
 1. An in-house or other tobacco compliance employee training program was in place to provide the employee with information on the State and Federal regulations regarding sales of tobacco products, alternative nicotine products or vapor products to persons under twenty-one (21). Such training program must be attended by all employees who sell tobacco products, alternative nicotine products or vapor products to the general public;
 2. A signed statement by the employee stating that the employee has been trained and understands the State laws and Federal regulations regarding the sale of tobacco products, alternative nicotine products or vapor products to persons under twenty-one (21); and
 - F. The exemption in Subsection (E) of this Section shall not apply to any person who is considered the general owner or operator of the outlet where tobacco products, alternative nicotine products or vapor products are available for sale if:
 1. Four (4) or more violations per location of Subsection (C) of this Section occur within a one-year period; or
 2. Such person knowingly violates or knowingly allows his/her employees to violate Subsection (C) of this Section.
 - G. If a sale is made by an employee of the owner of an establishment in violation of this Article, the employee shall be guilty of an offense established in Subsections (A), (B) and (C) of this Section. If a vending machine is in violation of Section 210.2140, the owner of the establishment shall be guilty of an offense established in Subsections (C) and (D) of this Section. If a sample is distributed by an employee of a company conducting the sampling, such employee shall be guilty of an offense established in Subsections (C) and (D) of this Section.
 - H. A person cited for selling, providing or distributing any tobacco product, alternative nicotine product or vapor product to any individual less than twenty-one (21) years of age in violation of Subsection (A), (B) or (C) of this Section shall conclusively be presumed to have reasonably relied on proof of age of the purchaser or recipient, and such person shall not be found guilty of such violation if such person raises and proves as an affirmative defense that such individual presented a driver's license or other government-issued photo identification purporting to establish that such individual was twenty-one (21) years of age or older.
 - I. Any person adversely affected by this Section may file an appeal with the Administrative Hearing Commission which shall be adjudicated pursuant to the procedures established in Chapter 621, RSMo.

SECTION V: THOSE PROHIBITED FROM PURCHASE OR POSSESSION OF TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS OR VAPOR PRODUCTS — MISREPRESENTATION OF AGE.

- A. No person less than eighteen (18) years of age shall possess, cigarettes, tobacco products, alternative nicotine products or vapor products unless such person is an employee of a seller of cigarettes, tobacco products, alternative nicotine products or vapor products and is in such

possession to affect a sale in the course of employment or an employee of the Division of Alcohol and Tobacco Control for enforcement purposes pursuant to Subsection (5) of Section 407.934, RSMo.

- B. No person less than twenty-one (21) years of age shall purchase, or attempt to purchase, cigarettes, tobacco products, alternative nicotine products or vapor products.
- C. Any person less than twenty-one (21) years of age shall not misrepresent his/her age to purchase cigarettes, tobacco products, alternative nicotine products or vapor products.
- D. Any person who violates the provisions of this Section shall be penalized as follows:
 - 1. For the first violation, the person is guilty of an infraction and shall have any cigarettes, tobacco products, alternative nicotine products or vapor products confiscated.
 - 2. For a second violation and any subsequent violations, the person is guilty of an infraction, shall have any cigarettes, tobacco products, alternative nicotine products or vapor products confiscated and shall complete a tobacco education or smoking cessation program, if available.

SECTION VI: Retail Sales Tax License Required for Sale of Tobacco Products, Alternative Nicotine Products or Vapor Products.

No person shall sell cigarettes, tobacco products, alternative nicotine products or vapor products unless the person has a retail sales tax license.

SECTION VII: REQUIRED SIGN STATING VIOLATION OF STATE LAW TO SELL TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS OR VAPOR PRODUCTS TO PERSONS UNDER AGE 21 — DISPLAY OF SIGN REQUIRED, WHERE:

- A. The owner of an establishment at which tobacco products, alternative nicotine products, vapor products or rolling papers are sold at retail or through vending machines shall cause to be prominently displayed in a conspicuous place at every display from which tobacco products, alternative nicotine products, vapor products are sold and, on every vending machine where tobacco products, alternative nicotine products, vapor products are purchased a sign that shall:
 - 1. Contain in red lettering at least one-half (1/2) inch high on a white background the following:
 - a. IT IS A VIOLATION OF THE LAW FOR CIGARETTES, OTHER TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS OR VAPOR PRODUCTS TO BE SOLD OR OTHERWISE PROVIDED TO ANY PERSON UNDER THE AGE OF TWENTY-ONE OR FOR SUCH PERSON TO PURCHASE, ATTEMPT TO PURCHASE CIGARETTES, OTHER TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS OR VAPOR PRODUCTS; and
 - b. 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 and the words "Under 21."

SECTION VIII: RESTRICTIONS ON SALES OF INDIVIDUAL PACKS OF CIGARETTES.

- A. No person or entity shall sell individual packs of cigarettes or smokeless tobacco products unless such packs satisfy one (1) of the following conditions prior to the time of sale:
1. It is sold through a vending machine; or
 2. It is displayed behind the checkout counter, or it is within the unobstructed line of sight of the sales clerk or store attendant from the checkout counter.

SECTION IV: PROOF OF AGE REQUIRED, WHEN DEFENSE TO ACTION FOR VIOLATION IS REASONABLE RELIANCE ON PROOF — LIABILITY.

- A. A person or entity selling tobacco products, alternative nicotine products or vapor products or rolling papers or distributing tobacco product, alternative nicotine product or vapor product samples shall require proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that such prospective purchaser or recipient may be under the age of twenty-one (21).
- B. The operator's or chauffeur's license issued pursuant to the provisions of Section 302.177, RSMo., or the operator's or chauffeur's license issued pursuant to the laws of any State or possession of the United States to residents of those States or possessions, or an identification card as provided for in Section 302.181, RSMo., or the identification card issued by any uniformed service of the United States, or a valid passport shall be presented by the holder thereof upon request of any agent of the Division of Alcohol and Tobacco Control or any owner or employee of an establishment that sells tobacco products, alternative nicotine products or vapor products for the purpose of aiding the registrant, agent or employee to determine whether or not the person is at least twenty-one (21) years of age when such person desires to purchase or obtain tobacco products, alternative nicotine products or vapor products procured from a registrant. Upon such presentation, the owner or employee of the establishment shall compare the photograph and physical characteristics noted on the license, identification card or passport with the physical characteristics of the person presenting the license, identification card or passport.
- C. Any person who shall, without authorization from the Department of Revenue, reproduce, alter, modify or misrepresent any chauffeur's license, motor vehicle operator's license or identification card shall be deemed guilty of an ordinance violation.
- D. Reasonable reliance on proof of age or on the appearance of the purchaser or recipient shall be a defense to any action for a violation of Subsections (A), (B) and (C) of Section 210.2110 of this Article. No person shall be liable for more than one (1) violation of Subsections (B) and (C) of Section 210.2110 on any single day.

SECTION X: This ordinance shall be in full force and effect from and after its date of passage and approval by the Board of Aldermen.

FIRST READING BY TITLE WITH COPIES AVAILABLE TO THE PUBLIC HELD ON THIS 19th DAY OF OCTOBER 2021.

	Aye	Nay
Alderman PRIEBE	_____	_____
Alderman LARSON	_____	_____
Alderman SCHMIDT	_____	_____
Alderman MCPHAIL	_____	_____

SECOND READING AND FINAL PASSAGE HERE ON THIS 19TH DAY OF OCTOBER 2021.

	Aye	Nay
Alderman PRIEBE	_____	_____
Alderman LARSON	_____	_____
Alderman SCHMIDT	_____	_____
Alderman MCPHAIL	_____	_____

Date Approved _____

DALE MAISEL, Mayor

Attest:

KRISTY KEITHLEY, City Clerk