

BILL NO. 15-125

ORDINANCE NO. 18542

AN ORDINANCE AMENDING CHAPTER 11 ARTICLE 3 "MINORS PROHIBITED FROM SMOKING", OF THE INDEPENDENCE CITY CODE TO UPDATE SECTIONS 1 "DEFINITIONS," 2 "PROHIBITION YOUTH SMOKING," 3 "PROHIBITION ON SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 18," AND 5 "PENALTIES."

WHEREAS, a need has been determined to revise provisions within Chapter 11 of the Independence City Code;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI, AS FOLLOWS:

SECTION 1. Section 11.03 of the Independence City Code is hereby amended to read as follows:

**ARTICLE 3. MINORS PROHIBITED FROM ~~SMOKING~~ USING TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR PRODUCTS**

SECTION 2. Section 11.03.001 of the Independence City Code is hereby amended to read as follows:

"SEC. 11.03.001. DEFINITIONS.

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

**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.**

TOBACCO PRODUCT shall mean smokeless tobacco products, tobacco snuff, cigarettes, cigars, pipe tobacco and other tobacco products suitable for smoking.

RETAILER shall mean any person, firm or corporation engaged in the business of selling tobacco **products, alternative nicotine products, or vapor** products by personal handling to an ultimate customer or consumer.

**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 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 or tobacco product.**

WHOLESALE DEALER shall mean any person, firm or corporation who shall sell, distribute, convey, give away or deliver tobacco **products, alternative nicotine products, or vapor** products to a retailer.

SECTION 3. Section 11.03.002 of the Independence City Code is hereby amended to read as follows:

“SEC. 11.03.002. PROHIBITION YOUTH SMOKING.

No person under the age of eighteen (18) shall possess or use tobacco **products, alternative nicotine products, or vapor** products.

**No person under the age of twenty-one (21) shall purchase tobacco products, alternative nicotine products, or vapor products.**

SECTION 4. Section 11.03.003 of the Independence City Code is hereby amended to read as follows:

“SEC. 11.03.003. PROHIBITION ON SALE OF TOBACCO **PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR** PRODUCTS TO PERSONS UNDER THE AGE OF ~~18~~ **21**.”

A. Each retailer and wholesale dealer shall ensure that the cigarettes, cigarette tobacco, cigars, or smokeless tobacco **products, alternative nicotine products, or vapor products** it manufactures, labels, advertises, packages, distributes, sells or otherwise holds for sales comply with all applicable requirements under this Article.

B. Each retailer and wholesale dealer shall remove from each point of sale all self-service displays, advertising, labeling and other items that they own that do not comply with the requirements under this Article.

C. Each retailer shall ensure that all sales of cigarettes, cigarette tobacco, cigars, or smokeless tobacco **products, alternative nicotine products, or vapor products** to any person comply with the following requirements:

1. No retailer may sell any tobacco **products, alternative nicotine products, or vapor** products to any person younger than ~~eighteen (18)~~ **twenty-one (21)** years of age.

2. Each retailer, or retailer’s agent, shall verify by means of photographic identification containing the bearer’s date of birth, that no person purchasing tobacco **products, alternative nicotine products, or vapor** products is younger than ~~eighteen (18)~~ **twenty-one (21)** years of age. No such verification is required for any person who appears to be over the age of twenty-seven (27).

3. Self-service displays shall not be accessible to persons younger than ~~18~~ **21** years of age.

4. Every retailer shall have posted four (4) ~~State-mandated~~ signs which indicate “It is a violation of ~~State~~ **the** law for cigarettes, or other tobacco products, **alternative nicotine products, or vapor products** to be sold to any person under ~~18~~ **21**”.

5. No retailer may break or otherwise open any cigarette, cigarette tobacco, cigar, smokeless tobacco, or any tobacco related products, **alternative nicotine products, or vapor products** to sell or distribute individual cigarettes or a number of unpackage**d** cigarettes **items** that is smaller than ~~the quantity~~

in the minimum cigarette **manufacturer's intended** package size.

6. Each retailer shall ensure that all self-service displays, advertising, labeling, and other items, that are located in the retailer's establishment and that do not comply with the requirements of this Article, are removed or are brought into compliance with the requirements under this Article.

7. Each retailer shall ensure that his or her employees are made aware of the provisions of this Article and shall ensure that his or her employees comply with the provisions of this Article.

D. The following conditions of sale and distribution shall be followed.

1. Except as otherwise provided under this Article, no wholesale dealer or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than 20 cigarettes.

2. Except as otherwise provided under this Article, a retailer may sell tobacco **products, alternative nicotine products, or vapor** products only in a direct, face-to-face exchange between the retailer and the consumer.

3. Self-service displays, mail-order sales and other "impersonal" modes of sales are prohibited.

4. No person, business or retailer shall located, keep, maintain or use, or permit the location, installation, keeping, maintenance or use on his, her or its premises any vending machine for the purpose of selling or distributing any tobacco **product, alternative nicotine product, or vapor** product unless the premises is licensed for the sale of alcoholic beverages by the drink and the vending machine is visible from the location within the premises where the alcoholic beverages are dispensed. Violation of this paragraph will result in a Five Hundred Dollar (\$500.00) fine.

5. No wholesale dealer or retailer may distribute or cause to be distributed free samples **of tobacco products, alternative nicotine products, or vapor** products.

6. No wholesale dealer or retailer may sell or distribute, or cause to be sold or distributed, any tobacco **products, alternative nicotine products, or vapor** products with labels, labeling or advertising not in compliance with Federal, State and local law.

E. No person shall sell, distribute or otherwise provide cigarettes, cigarette tobacco, cigars, smokeless tobacco, or any tobacco related products, **alternative nicotine products, or vapor products** to a person who is under the age of ~~eighteen (18)~~ **twenty-one (21)**.

**SECTION 5.** Section 11.03.005 of the Independence City Code is hereby amended to read as follows:

**SEC. 11.03.005. PENALTIES.**

A. Any wholesale dealer or retailer violating the provisions of this Article shall be subject to fines in the following amounts:

First Offense: Not less than One Hundred Dollars (\$100.00) nor more than Two Hundred Fifty Dollars (\$250.00)

Second Offense: Not less than Two Hundred Fifty Dollars (\$250.00) nor more than Five Hundred Dollars (\$500.00)

Third & Subsequent Offenses: Five Hundred Dollars (\$500.00)

In addition, any violation shall subject the manufacturer, distributor or retailer to suspension or revocation of its occupation license under the provisions of Chapter 5.

B. Any person under the age of ~~eighteen (18)~~ **twenty-one (21)** violating the provisions of this Article for the first time shall be given the opportunity to attend a tobacco education class approved by the judge, successful completion of which shall result in dismissal of the charge. Any person under the age of ~~eighteen (18)~~ **twenty-one (21)** violating the provisions and not attending the assigned tobacco education class within ninety (90) days, or any person under the age of ~~eighteen (18)~~ **twenty-one (21)** violating the provisions of this Article subsequent to attending a tobacco education class assigned by a judge, shall be subject to a fine of not more than One Hundred Dollars (\$100.00) or community service, or both. Preference shall be given to community service related to tobacco use.

Second (2nd) offense and third (3rd) and subsequent offense penalties will be left to the discretion of the court judge. Penalties will range from attendance at a tobacco education class, and/or assignment of tobacco related community service, and/or a monetary fine.

C. Any other person violating the provisions of this Article shall be subject to a fine of not more than Five Hundred Dollars (\$500.00).

SECTION 6. That all other parts and provisions of the City Code remain in full force and effect unless previously or subsequently amended or repealed.

SECTION 7. The effective date of this ordinance shall be March 1, 2016, and all previous codes shall remain in effect until that date.

PASSED THIS 21<sup>st</sup> DAY OF DECEMBER, 2015, BY THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI.

  
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Presiding Officer of the City Council  
of the City of Independence, Missouri

ATTEST:

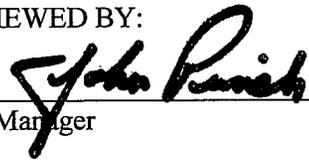
  
\_\_\_\_\_  
City Clerk

Minors Prohibited From Smoking Code Amendment  
Section 11.03  
12/4/15-bb

APPROVED - FORM AND LEGALITY:

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

REVIEWED BY:

  
\_\_\_\_\_  
City Manager

**NOTE: Text being eliminated by this ordinance is lined through and text being added by this ordinance is bolded and underscored.**