

ORDINANCE NO. 200937

Amending Chapter 20 Code of Ordinances entitled "Cigarettes" by renaming it "Tobacco and Nicotine;" repealing Sections 20-1, 20-2, 20-8, and 20-18 and replacing them with new sections of like number and subject matter; enacting Sections 20-4, "Sale or distribution of flavored products prohibited," and 20-5, "Medical marijuana exempt;" and amending Chapter 50, Code of Ordinances, by repealing Section 50-235, and enacting a new section, of like number and subject matter entitled "Sale or distribution of tobacco products, rolling papers, alternative nicotine products or vapor products to those under the age of 21."

WHEREAS, scientific reviews by the Tobacco Products Scientific Advisory Committee (TPSAC) and the U.S. Food and Drug Administration (FDA) found marketing of menthol cigarettes likely increases the prevalence of smoking among the entire population, and especially among youth, African Americans, and possibly Hispanic and Latino individuals; and

WHEREAS, 19.4% of adults in Missouri smoke; and

WHEREAS, nine of ten adult cigarette smokers tried their first cigarette before the age of 18 and 9.2% of Missouri high school students report currently smoking cigarettes; and

WHEREAS, although smokers are most likely to use electronic smoking devices such as e-cigarettes, almost a third of current users are nonsmokers, suggesting that e-cigarettes contribute to primary nicotine addiction and to renormalization of tobacco use; and

WHEREAS, youth reported product flavoring as a top reason for using tobacco within the past 30 days; and

WHEREAS, the addition of menthol to cigarettes is the source of addiction for more than half of all teen smokers and results in increased youth initiation to smoking; and

WHEREAS, by adding menthol to cigarettes tobacco, companies mask the natural harshness and taste of tobacco, in that the minty flavor makes tobacco products milder, and therefore easier to use, harder to quit, and more appealing to youth and new users; and

WHEREAS, like menthol, other flavorings help mask the naturally harsh taste of tobacco, making it easier for young people to start and continue using tobacco products; and

WHEREAS, e-cigarette use predicts the onset of combustible tobacco product use; and

ORDINANCE NO. 200937

WHEREAS, e-cigarettes are now the most commonly used tobacco product among Missouri's youth; 39.9% of Missouri high school students have used an electronic smoking device in their lifetime; and

WHEREAS, Kansas City seeks to protect public health and welfare by reducing access to flavored tobacco products, making it easier to quit and more difficult to start; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 20, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by changing the title of said chapter to "Tobacco and Nicotine."

Section 2. That Chapter 20, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Sections 20-1, 20-2, 20-8, and 20-18 and replacing them with new sections of like number and subject matter and enacting Sections 20-4, "Sale or distribution of flavored products prohibited," and 20-5, "Medical marijuana exempt," to read as follows:

Sec. 20-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alternative nicotine product means 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.

Cigarettes means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

Flavored alternative nicotine product means any alternative nicotine product that imparts a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption or use of an alternative nicotine product, including, but not limited to, any taste or smell relating to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, or any candy, fruit, dessert, alcoholic beverage, herb, or spice. An alternative nicotine product shall be presumed to be a flavored alternative nicotine product if a retailer, manufacturer, or the agent or employee

of a retailer or manufacturer has made a statement or claim directed to consumers or the public, whether expressed or implied, that the product or device imparts a distinguishable taste or smell other than the taste or smell of tobacco or uses text, images, or coloring on the alternative nicotine product's labeling or packaging to explicitly or implicitly indicate that the alternative nicotine product imparts a taste or smell other than the taste or smell of tobacco.

Flavored non-nicotine vapor product means any non-nicotine vapor product that imparts a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption or use of a non-nicotine vapor product, including, but not limited to, any taste or smell relating to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, or any candy, fruit, dessert, alcoholic beverage, herb, or spice. An alternative nicotine product shall be presumed to be a flavored non-nicotine vapor product if a retailer, manufacturer, or the agent or employee of a retailer or manufacturer has made a statement or claim directed to consumers or the public, whether expressed or implied, that the product or device imparts a distinguishable taste or smell other than the taste or smell of tobacco or uses text, images, or coloring on the non-nicotine vapor product's labeling or packaging to explicitly or implicitly indicate that the non-nicotine vapor product imparts a taste or smell other than the taste or smell of tobacco.

Flavored tobacco product means any tobacco product that imparts a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, or any candy, fruit, dessert, alcoholic beverage, herb, or spice. A tobacco product shall be presumed to be a flavored tobacco product if a retailer, manufacturer, or the agent or employee of a retailer or manufacturer has made a statement or claim directed to consumers or the public, whether expressed or implied, that the product or device imparts a distinguishable taste or smell other than the taste or smell of tobacco or uses text, images, or coloring on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a taste or smell other than the taste or smell of tobacco.

Flavored vapor product means any vapor product that imparts a taste or smell, other than the taste or smell of tobacco that is distinguishable by an ordinary consumer either prior to, or during the use of a vapor product, including, but not limited to, any taste or smell relating to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, or any candy, fruit, dessert, alcoholic beverage, herb, or spice. A vapor product shall be presumed to be a flavored vapor product if a retailer, manufacturer, or the agent or employee of a retailer or manufacturer has made a statement or claim directed to consumers or the public, whether expressed or implied, that the product or device imparts a distinguishable taste or smell other than the taste or smell of tobacco or uses text, images, or coloring on the vapor product's labeling or packaging to explicitly or implicitly indicate that the vapor product imparts a taste or smell other than the taste or smell of tobacco.

ORDINANCE NO. 200937

Flavor enhancer means any product designed, manufactured, produced, marketed, or sold to produce a flavored tobacco product, flavored vapor product, flavored alternative nicotine product, or flavored non-nicotine vapor product when added to any tobacco product, vapor product, alternative nicotine product, or flavored non-nicotine vapor product.

Non-nicotine vapor product means any vapor cartridge 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 that does not contain nicotine. A non-nicotine vapor product does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

Occupation license tax means the tax imposed by the city under this chapter upon the business and for the privilege of selling cigarettes at retail in the city.

Package means a quantity of cigarettes wrapped and sealed in paper, tinfoil or otherwise by the manufacturer of cigarettes prior to being placed in cartons for shipment from the manufacturer.

Retail dealer means any person other than a wholesale dealer, jobber or manufacturer engaged in the business of selling or disposing of cigarettes, by personal handling or through a vending machine, to the ultimate consumer or agent.

Sale means any transfer of title or possession, or both, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration or any agreement therefor.

Stamp. A stamp shall not only include a small piece of paper with such printing thereon as may be prescribed by the manager of regulated industries, which, when affixed to a package of cigarettes and cancelled, shall evidence payment of the occupation tax thereon, but shall also include the impression or printing of a meter machine when used in lieu of a stamp.

Tobacco product means any substance containing tobacco leaf including but not limited to blunt wraps, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco.

Vapor product means 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, that can be used to produce vapor from 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 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 means 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, vapor products, or non-nicotine vapor products.

Wholesale dealer means any person authorized to sell, distribute, deliver, convey or give away cigarettes to retail dealers or other persons in the city, for the purpose of resale only.

Sec. 20-2. License required for dealers and manufacturers; registration fee; amount of tax.

(a) *License; registration fee.* Every wholesale dealer, jobber, retail dealer, manufacturer or other person engaged in selling cigarettes or other tobacco products, alternative nicotine products, vapor products, or non-nicotine vapor products, or offering, delivering or displaying cigarettes or other tobacco products, alternative nicotine products, vapor products, or non-nicotine vapor products for sale within the city shall procure a tobacco and nicotine license for each place the products are sold, offered or displayed, and at the same time such license is issued shall pay to the manager of regulated industries a registration fee of \$1.00 for each such place of business.

(b) *Occupation license tax.* In addition to the registration fee, every retailer shall pay an occupation license tax at the rate of \$5.00 per thousand for all cigarettes sold, offered for sale, delivered, displayed for sale, or otherwise disposed of, and for all cigarettes in his possession.

(c) *Use of additional revenues.* The additional revenues realized by the passage of this section shall be designated for use in hazardous material and emergency response activities of the city.

Sec. 20-4. Sale or distribution of flavored products prohibited.

No person shall sell, offer, deliver or display any flavored tobacco products, flavored alternative nicotine products, flavored vapor products, flavored non-nicotine vapor products or flavor enhancer within the city.

Sec. 20-5. Medical marijuana exempt.

Nothing in this chapter shall be read to prevent a person authorized by the state of Missouri to possess, sell, offer, deliver, display, or manufacture medical marijuana products or devices used to administer medical marijuana from carrying out those medical marijuana related acts which they are authorized to make by the state of Missouri. No person or entity properly licensed by that state of Missouri as a medical marijuana cultivation facility, medical marijuana dispensary facility, medical marijuana-

infused products manufacturer, or medical marijuana testing facility shall be required to obtain a license under this chapter unless the person or entity also sells, offers, delivers or displays tobacco products. Notwithstanding any other provision of this chapter, a person may sell or distribute rolling papers and vapor products that do not contain tobacco to a person under the age of twenty-one if the person presents a valid, current medical marijuana identification card at the time of the transaction.

Sec. 20-8. Issuance of license; restrictions on license; suspension or revocation of license.

(a) *Application; issuance.* Every application for a tobacco and nicotine license shall be made upon a form prescribed, prepared and furnished by the manager of regulated industries, and shall set forth such information as the manager shall require. Upon approval of the application, the manager of regulated industries shall grant and issue to the applicant a tobacco and nicotine license as provided in this chapter.

(b) *Transfer; display; term.* Tobacco and nicotine licenses shall not be assignable and shall be valid only for the persons in whose names issued, and for the transaction of business in the places designated therein, and shall at all times be conspicuously displayed at the places for which issued. All licenses shall expire on December 31 in each and every year, unless sooner suspended, surrendered or revoked for cause by the manager of regulated industries.

(c) *Duplicates.* Whenever any license issued under the provisions of this section is defaced, destroyed or lost, the manager of regulated industries shall issue a duplicate license for the defaced, destroyed or lost license upon the payment of a fee of \$1.00.

(d) *Suspension or revocation.* The manager of regulated industries shall have the authority to suspend for a period not to exceed 90 days, or to revoke a tobacco and nicotine license whenever the manager finds that the holder of the license or his employee:

- (1) Has failed to comply with any of the provisions of this chapter or any rules or regulations of the manager of regulated industries prescribed or promulgated under this chapter;
- (2) Has been convicted of an ordinance violation for violating any of the provisions of sections 20-2, 20-3, 20-4, and 20-6 to 20-13 inclusive of this chapter;
- (3) Has sold or distributed tobacco, alternative nicotine, vapor, or non-nicotine vapor products or rolling papers on the licensed premises to any person under the age of twenty-one in violation of law;
- (4) Has permitted or allowed any person under the age of twenty-one to purchase or obtain tobacco, alternative nicotine, vapor, or non-nicotine

ORDINANCE NO. 200937

vapor products from vending machines located on the licensed premises, in violation of law;

- (5) Has sold, distributed or displayed drug paraphernalia on the licensed premises in violation of law;
- (6) Has sold, distributed, delivered, manufactured, produced or possessed a controlled substance or controlled substance analogue in violation of Missouri law on the licensed premises;
- (7) Has possessed an imitation controlled substance in violation of Missouri law on the licensed premises.

(e) *Repeated offense.* If any licensee is found in violation of this chapter two (2) additional times within (36) months of a first violation, the department shall suspend the tobacco and nicotine license for the location where the violations occurred for a period of at least thirty (30) days. Each subsequent violation will result in an additional thirty (30) day suspension of the right to sell tobacco, alternative nicotine, vapor and non-nicotine vapor products.

Upon suspending or revoking any tobacco and nicotine license, the manager of regulated industries shall request the holder thereof to surrender immediately all license cards or tokens, or duplicates thereof, and the holder shall surrender promptly all such license cards or tokens to the manager of regulated industries as requested, together with all stamps, if any, in their possession which the holder has not affixed to packages of cigarettes, and the manager of regulated industries is hereby authorized to refund all money paid for such stamps.

(f) *Notice; hearing.* Before suspending or revoking any tobacco and nicotine license, the manager of regulated industries shall send notice in writing at least ten days before the proposed suspension or revocation date by certified mail to the license holder's last known address. If the license holder disputes the proposed suspension or revocation, the holder shall submit a written request for hearing to the manager of regulated industries, which request must be received before the proposed suspension or revocation date. If the license holder fails to make a timely request for a hearing or fails to appear for a requested hearing, the license shall be suspended or revoked. Upon receipt of a timely request for hearing, the manager of regulated industries shall stay the suspension or revocation pending the hearing and shall hold a hearing without unnecessary delay. The manager of regulated industries shall make a record of the hearing and shall notify the license holder in writing of the decision.

(g) *Judicial review.* Pursuant to RSMo ch. 536, the license holder may seek judicial review of a decision by the manager of regulated industries to suspend or revoke the tobacco and nicotine license.

(h) *Informal disposition.* Nothing contained in this section or in this chapter shall preclude the informal disposition of contested cases by stipulation, consent order or default, or by agreed settlement.

Sec. 20-18. Penalty for violation of chapter.

(a) Any person who is found guilty of violating section 20-02(a) shall be punished by a fine of no more than \$1,000.00.

(b) The provisions of this section shall not serve to limit any civil remedies that may be available to the city in law or equity, nor shall the city's pursuit or receipt of any civil remedy serve to limit any penalty authorized herein.

Section 3. That Chapter 50, Code of Ordinances is hereby amended by repealing section 50-235, and enacting a new section like number and subject matter entitled, "Sale or distribution of tobacco products, rolling papers, alternative nicotine products, vapor products, or non-nicotine vapor products, to those under the age of 21," to read as follows:

Sec. 50-235. Sale or distribution of tobacco products, rolling papers, alternative nicotine products, vapor products, or non-nicotine vapor products to those under the age of twenty- one.

(a) *Definitions.* As used in this section the following terms mean:

- (1) *Alternative nicotine product* means 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) *Blunt wrap* means an individual tobacco wrapper, by whatever name known, that is designed to be sold to the public and is made wholly or in part from tobacco, including reconstituted tobacco, whether in the form of a tobacco leaf, sheet, or tube.
- (3) *Distribute* means a conveyance to the public by sale, barter, gift or sample.
- (4) *Non-nicotine vapor product* means any vapor cartridge 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 that does not contain nicotine. A non-nicotine vapor product does not include drugs, devices, or combination products authorized for

ORDINANCE NO. 200937

sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

- (5) *Person* means an individual, partnership, co-partnership, firm, company, public or private corporation, association, joint stock company, trust, estate, political subdivision or any agency, board, department or bureau of the state or federal government, or any other legal entity which is recognized by law as the subject of rights and duties.
 - (6) *Proof of age* means 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.
 - (7) *Rolling papers* means 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 smokable cigarette.
 - (8) *Sample* means a product distributed to members of the general public at no cost for product promotional purposes.
 - (9) *Tobacco product* means any substance containing tobacco leaf including but not limited to blunt wraps, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco.
 - (10) *Vapor product* means 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, that can be used to produce vapor from 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 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.
 - (11) *Vending machine* means 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, vapor products, or non-nicotine vapor products.
- (b) *Required sign stating violation of law to sell tobacco to persons under age 21; display of sign required on tobacco displays and vending machines; control of tobacco products.*

ORDINANCE NO. 200937

- (1) The owner of an establishment at which tobacco, alternative nicotine, vapor, or non-nicotine vapor products are sold at retail or through vending machines shall cause to be prominently displayed in a conspicuous place at every display from which tobacco, alternative nicotine, vapor, or non-nicotine vapor products are sold and on every vending machine where tobacco, alternative nicotine, vapor, or non-nicotine vapor products are purchased a sign that shall:
 - a. Contain in red lettering at least one-half-inch high on a white background the following: "It is a violation of law for cigarettes, other tobacco products, alternative nicotine products or vapor products to be sold to any person under the age of 21 or for such person to purchase or 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 inches high defaced by a red diagonal diameter of a surrounding red circle, and the words "Under 21."
 - (2) Further, all such vending machines shall be located where persons under the age of twenty-one are denied access.
 - (3) It shall be unlawful for any business proprietor, manager or other person in charge or control of a retail business of any kind to stock or display any tobacco product in any way which allows a customer to access such tobacco, alternative nicotine, vapor, or non-nicotine vapor products without first securing the physical assistance of an employee, except that adult customers may be allowed to enter walk-in humidors for the purpose of selecting for purchase cigars displayed therein.
- (c) *Proof of age required, when: defense to action for violation is reasonable reliance on proof; liability.*
- (1) A person selling or distributing tobacco, alternative nicotine, vapor, or non-nicotine vapor products, or rolling papers, or product samples thereof shall require proof of age from a prospective purchaser or recipient.
 - (2) Reasonable reliance on proof of age shall be a defense to any action for a violation of subsection (d)(1), (d)(2) or (d)(3).
- (d) *Unlawful to sell or distribute tobacco products, rolling papers, alternative nicotine products, vapor products, or non-nicotine vapor products to persons under age 21, failure to display required signs, penalties; what persons are liable; when.*
- (1) It shall be unlawful for any person to sell or distribute any tobacco, alternative nicotine, vapor, or non-nicotine vapor products, or rolling

ORDINANCE NO. 200937

papers to any person under the age of twenty-one or allow such sale or distribution.

- (2) It shall be unlawful for any employee or owner of an establishment where any vending machine is located to permit or allow any person under the age of twenty-one to purchase or otherwise obtain any tobacco, alternative nicotine, vapor, or non-nicotine vapor products, or rolling papers from such vending machine.
- (3) It shall be unlawful for any person to distribute any tobacco, alternative nicotine, vapor, or non-nicotine vapor products, or rolling paper, or samples thereof in or on any public street, sidewalk, school ground or park, or on private property open to the public without the property owner's permission.

(e) *Medical Marijuana Exemption.* Nothing in this section shall be read to prevent a person authorized by the state of Missouri to possess, sell, offer, deliver, display, or manufacture medical marijuana products or devices used to administer medical marijuana from carrying out those medical marijuana related acts which they are authorized to make by the state of Missouri. No person or entity properly licensed by that state of Missouri as a medical marijuana cultivation facility, medical marijuana dispensary facility, medical marijuana-infused products manufacturer, or medical marijuana testing facility shall be required to obtain a license under this section unless the person or entity also sells, offers, delivers or displays tobacco products. Notwithstanding any other provision of this section, a person may sell or distribute rolling papers and vapor products that do not contain tobacco to a person under the age of twenty-one if the person presents a valid, current medical marijuana identification card at the time of the transaction.

(f) *Penalty; continuing violations.*

- (1) Any person who is found guilty of violating any provision of this section shall be punished by a fine of no more than \$1,000.00.
- (2) Any person who violates any provision of subsection (d) of this section shall, for each offense, be fined not less than \$100.00 and not more than \$1,000.00.
- (3) Each violation of, or failure, refusal or neglect to comply with, any provision of this section shall constitute a separate and distinct offense.
- (4) It shall be an affirmative defense to any charge brought pursuant to this section that the person was acting within the scope of their official duties as a non-management and non-owner employee.

ORDINANCE NO. 200937

Section 4. This ordinance shall become effective ninety days after the date it is approved.

Approved as to form and legality:

Emalea Black
Assistant City Attorney