

ORDINANCE NO. 150505, AS AMENDED

Amending Chapter 20, Code of Ordinances, entitled Cigarettes, by repealing Sections 20-1 through 20-19 and enacting in lieu thereof Sections 20-1 through 20-3, 20-6 through 20-11, and 20-13 through 20-19 to put the Manager of Regulated Industries in charge of the administration and enforcement of the cigarette occupation license and tax, and to include alternative nicotine products and vapor products in the required posting of notice of prohibited sales to minors; also amending Chapter 50, Offenses and Miscellaneous Provisions, by repealing Section 50-235 and enacting in lieu thereof a new Section 50-235 adding references to alternative nicotine products and vapor products.

WHEREAS, the City requires all retail cigarette dealers, wholesale cigarette dealers, cigarette manufacturers, jobbers, or any other person selling, offering, delivering or displaying cigarettes for sale within the City to procure a license, pay a registration fee, and pay an occupation license tax in the form of tax stamps affixed to packages of cigarettes; and

WHEREAS, Chapter 20 of the Code of Ordinances now authorizes the Commissioner of Revenue, with the assistance of the Manager of Regulated Industries, to enforce the cigarette license requirements, to collect the cigarette occupation license tax through the sale of tax stamps, and to suspend or revoke cigarette occupation licenses for various violations, including failure to pay the tax and sales of cigarettes to minors; and

WHEREAS, in this role of assisting with enforcement of Chapter 20, the Division of Regulated Industries has stepped up enforcement to prevent cigarette sales to minors, having performed more than two hundred inspections during the 2014-15 fiscal year; and

WHEREAS, it would be in the best interests of the City for the Manager of Regulated Industries to have sole and complete responsibility for the administration of Chapter 20 of the Code of Ordinances; and

WHEREAS, to protect the health of children in the City, Chapter 50 should be amended to make it an offense to sell alternative nicotine products and vapor products to minors, and Chapter 20 should be amended to include alternative nicotine products and vapor products in the posting of notice against sales to minors required in retail outlets selling such products; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 20 of the Code of Ordinances of the City of Kansas City, Missouri, entitled Cigarettes, is hereby amended by repealing Sections 20-1 through 20-3 and enacting in lieu thereof new sections of like number and subject to read as follows:

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CHAPTER 20 – CIGARETTES

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.

Minor means a person under the age of 18.

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.

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.

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 means a small piece of a paper product or substitute thereof 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, and also means the impression or printing from a cigarette tax stamp meter machine.

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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 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 means any mechanical, electric or electronic self-service device which, upon insertion of money, token or any other form of payment, dispenses 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 offering, delivering or displaying cigarettes for sale within the city shall procure a license therefor for each place selling or offering cigarettes for sale, 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. 20-3. Payment of tax by purchase of stamps; affixing of stamps by wholesaler.

The tax provided by section 20-2 shall be paid by purchase from the manager of regulated industries of stamps of such design and denomination as may be prescribed by the manager of regulated industries or by the director of neighborhoods and housing services. In the sale of such stamps, the manager of regulated industries shall allow a discount of five percent of the denominational or face value thereof to cover the cost of labor used in affixing the stamps. It shall be the duty of every wholesaler or jobber,

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before delivering cigarettes to any retailer or other person in the city, to affix to each package of cigarettes a meter impression or a stamp purchased from and furnished by the manager of regulated industries, which stamp or meter impression so affixed shall evidence the payment of the tax imposed by this chapter, such stamps to be canceled as soon as the stamps shall be affixed to the container containing such cigarettes. Before printing evidence of payment of the tax on any package of cigarettes, there shall be paid to the manager of regulated industries a tax at the rate of \$2.50 per thousand for each and all cigarettes to be marked.

Section 2. That Chapter 20 of the Code of Ordinances of the City of Kansas City, Missouri, entitled Cigarettes, is hereby amended by repealing Sections 20-4 and 20-5.

Section 3. That Chapter 20 of the Code of Ordinances of the City of Kansas City, Missouri, entitled Cigarettes, is hereby amended by repealing Sections 20-6 through 20-11 and enacting in lieu thereof new sections of like number and subject to read as follows:

Sec. 20-6. Sale at retail without tax stamps; counterfeiting or altering stamps; tampering with meter machine.

No person shall possess, sell or offer or display for sale at retail any cigarettes unless on the container thereof there has been affixed a stamp or authorized meter machine impression thereof evidencing the payment of the tax provided for in this chapter; nor shall any person falsely or fraudulently make, forge, alter or counterfeit any stamp or the impression or printed markings of a meter machine as shall be prescribed by the manager of regulated industries, or procure or cause to be falsely or fraudulently made, forged, altered or counterfeited any such stamp or the impression or printed markings of a meter machine, or knowingly and willfully utter, publish, pass or tender as true any false, altered, forged or counterfeited stamp or impression or printed markings of a meter machine; nor shall any person tamper or interfere with the operation of any cigarette tax stamp meter machine, or change, disturb or interfere with the proper registration by any such meter machine of the correct number of meter impressions of cigarette tax stamps made by such meter machine; nor shall any person use, operate or assist in the use or operation of any cigarette tax stamp meter machine which is defective, or which does not properly and accurately register every tax impression made by such machine; nor shall any person sell, offer for sale, display or have or retain in his possession one or more packages of cigarettes which have impressed thereon or attached thereto any false, spurious or counterfeit cigarette tax stamps, or any such meter impressions of cigarette tax stamps.

Sec. 20-7. Sale through vending machines.

(a) *Vending machine license.* Every person who, in the capacity of owner, lessee, tenant or in any other capacity, shall operate or cause to be operated, directly or indirectly, a vending machine for selling and dispensing cigarettes to the public, shall obtain from the manager of regulated industries a vending machine license, and such license, in whatever form prescribed by the manager of regulated industries, shall be affixed on a conspicuous part of the vending machine.

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(b) *Violations.* It shall be unlawful for any person to sell and dispense through a vending machine any cigarettes upon which the tax has not been paid and the payment thereof evidenced on the containers thereof. It shall be unlawful for any person, through a vending machine, or otherwise, to remove the container of cigarettes, in whole or in part, or mutilate such container, before the tax thereon has been paid and evidence of payment stamped or printed thereon.

(c) *Confiscation of machines.* Any vending machine which shall be operated in violation of the provisions of subsection (a) or (b) of this section may, upon the order and direction of the manager of regulated industries, together with the merchandise therein, be seized and confiscated by the police; provided, however, that all moneys found in any confiscated vending machine shall be held by the police department and returned to the lawful owner thereof upon proper showing of ownership after all fines, charges and penalties have been paid.

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

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

(b) *Transfer; display; term.* Cigarette 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 cigarette 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, 20-6 through 20-11, and 20-13 inclusive of this chapter;

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- (3) Has sold or distributed tobacco products, rolling papers, alternative nicotine products or vapor products on the licensed premises to any minor, in violation of section 50-235 of the Code of Ordinances;
- (4) Has permitted or allowed any minor to purchase or obtain tobacco products, rolling papers, alternative nicotine products or vapor products from vending machines located on the licensed premises, in violation of section 50-235 of the Code of Ordinances;
- (5) Has sold, distributed or displayed drug paraphernalia on the licensed premises in violation of section 50-201 of the Code of Ordinances;
- (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.

Upon suspending or revoking any cigarette license, the manager of regulated industries shall request the holder thereof to surrender to him 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 his possession which he has not affixed to packages of cigarettes, and the manager of regulated industries is hereby authorized to refund all money paid for such stamps.

(e) *Notice; hearing.* Before suspending or revoking any cigarette 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, he 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.

(f) *Judicial review.* Pursuant to RSMo Chapter 536, the license holder may seek judicial review of a decision by the manager of regulated industries to suspend or revoke the cigarette license.

(g) *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.

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Sec. 20-9. Posting of notice regarding sales to minors.

Every retail dealer in cigarettes or any other tobacco products, rolling papers, alternative nicotine products and vapor products shall keep posted in his place of business, in a conspicuous place readily visible and readable from the area in which, cigarettes or any other tobacco product, rolling paper, alternative nicotine product or vapor product sales are made, a notice to the public that state law prohibits the sale of cigarettes or any other tobacco products, alternative nicotine products or vapor products to minors; provided that every such retail dealer making sales of cigarettes or any other tobacco products, rolling papers, alternative nicotine products or vapor products through vending machines shall keep such notice prominently posted on the face of each such vending machine. The sign shall:

(a) Contain in red lettering at least one-half inch high on a white background the following: "It is a violation of state 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 eighteen or for such person to purchase, attempt to purchase or possess 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 words "Under 18".

Sec. 20-10. Retailers receiving unstamped cigarettes.

(a) *Duty to return cigarettes to vendor.* Whenever a retail dealer or other authorized person engaged in the business of selling cigarettes shall obtain or receive and have in his possession, for resale at retail in the city, packages of cigarettes upon which neither stamps have been affixed, or the impression or printed markings of an authorized meter machine, evidencing payment of the cigarette tax imposed by this chapter, he shall immediately return the cigarettes to the vendor for the affixing of tax stamps thereon, nor the impression or printed marking of an authorized meter machine.

(b) *Presumption of violation.* Whenever cigarettes in commercial quantities are found in the place of business of a retail dealer or other person or in a vending machine with neither the stamps affixed and cancelled in the manner prescribed by the manager of regulated industries, nor the impression or printed marking of an authorized meter machine, the presumption shall be that such cigarettes are being kept in violation of this chapter and they shall be declared contraband.

(c) *Manner of affixing stamps.* Stamps or the impression or printed marking of a meter machine shall be affixed to each package of cigarettes of an aggregate denomination not less than the amount of the occupation tax, based upon the contents therein, and shall be affixed in such manner as to be visible to the purchaser.

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Sec. 20-11. Records of dealers and preservation of records.

All wholesale dealers, jobbers and retail dealers within the city shall maintain and keep for a period of two years such records of cigarettes received, sold or delivered within the city as may be required by the manager of regulated industries.

Section 4. That Chapter 20 of the Code of Ordinances of the City of Kansas City, Missouri, entitled Cigarettes, is hereby amended by repealing Section 20-12.

Section 5. That Chapter 20 of the Code of Ordinances of the City of Kansas City, Missouri, entitled Cigarettes, is hereby amended by repealing Sections 20-13 through 20-19 and enacting in lieu thereof new sections of like number and subject to read as follows:

Sec. 20-13. Verification of payment of tax.

(a) *Inspections generally.* The manager of regulated industries and the city auditor, or their duly authorized representatives, are hereby authorized to examine books, records, invoices, papers and stocks of cigarettes in and upon any premises where such books, records, invoices, papers and stocks of cigarettes are placed, stored, warehoused or sold, and equipment of any such retail dealer, wholesale dealer, jobber, warehouse or place of storage, pertaining to the sale, storage or delivery of cigarettes. To verify the accuracy of the occupation tax imposed and assessed by this chapter, each such person is hereby directed and required to give to the manager of regulated industries or to the city auditor, or their duly authorized representatives, the means, facilities and opportunity for such examinations as are provided for and required in this section.

(b) *Inspection of vehicles.* The manager of regulated industries and the city auditor, or their authorized representatives, shall have authority to enter upon trucks or other vehicles known to be engaged in the business of delivering cigarettes in the city for resale at retail, for the purpose of examining the contents of such trucks or other vehicles in search of evidence of violation of the provisions of this chapter.

(c) *Segregation of deliveries.* Any person making delivery of cigarettes in the city consigned to more than one customer shall segregate the deliveries sufficiently to disclose the names and addresses of the retailers.

Sec. 20-14. Refunds of tax.

Whenever any cigarettes, upon which stamps have been placed or evidence of payment marked by meter machine by a wholesale dealer, jobber or retail dealer, have been sold and shipped by him into another city or state for sale or use there, or have become unfit for use and consumption or are unsalable, or have been destroyed, such wholesale dealer, jobber or retail dealer shall be entitled to a refund of the actual amount of tax paid by him on such cigarettes. If the manager of regulated industries is satisfied that any wholesale dealer, jobber or retail dealer is entitled to a refund, he shall void the stamps and shall issue a refund requisition therefor. The manager of regulated industries is hereby authorized to adopt, prescribe and promulgate such rules and regulations with

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regard to the presentation and proof of claims for refunds as he may deem expedient, in writing, and furnish such rules and regulations to interested parties.

Sec. 20-15. Seizure and sale of unstamped cigarettes.

(a) *Seizure.* Whenever the manager of regulated industries, any of his duly authorized representatives or any police officer shall discover any cigarettes subject to the tax provided by this chapter, and upon which the occupation tax has not been paid or the stamps affixed as required in this chapter, or evidence of payment shown by the impression or printed markings of a meter machine as required in this chapter, such official or officer shall be authorized and empowered forthwith to seize and take possession of such cigarettes, together with any vending machines for selling and dispensing cigarettes or receptacles in which they are held for sale, and such cigarettes and machines shall thereupon be deemed to be forfeited to the city.

(b) *Sale; collection of tax, penalty and costs.* The manager of regulated industries may, within a reasonable time thereafter, by public notice at least five days before the day of sale, sell such forfeited vending machines and such cigarettes at a place designated by him, and from the proceeds of such sale shall collect the tax due thereon, together with a penalty of 50 percent thereof and the costs incurred in such proceedings.

(c) *Disposition of remaining proceeds; additional penalties.* The manager of regulated industries shall pay the balance, if any, to the person in whose possession such forfeited cigarettes were found. Such seizure and sale shall not be deemed to relieve any person from fine or imprisonment provided for the violation of any provision of this chapter.

Sec. 20-16. Authority to prescribe additional rules and regulations.

In addition to the powers otherwise granted in this chapter to the manager of regulated industries, he is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to:

- (1) *Cancellation of stamps.* The method and means to be used in the cancellation of stamps, if any;
- (2) *Denomination and sale of stamps.* The denomination and sale of stamps;
- (3) *Meter machines.* The method and means of using meter machines for printing or impressing on containers of cigarettes evidence of the payment of tax;
- (4) *Delegation of powers.* The delegation of his powers to a deputy or employee of his office.
- (5) *Other matters.* Any other matter or thing pertaining to the administration and enforcement of this chapter.

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Sec. 20-17. Authority to administer oaths, take affidavits and subpoena witnesses and records.

The manager of regulated industries and the city auditor, or their employees or agents duly designated by them, shall have the power to administer oaths and take affidavits in relation to any matter or proceedings in the exercise of their powers and duties under this chapter. The manager of regulated industries or city auditor shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of their duties under this chapter and the enforcement of this chapter, and to examine them in relation thereto.

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

Any person found guilty of violating any of the provisions of sections 20-2, 20-3, 20-6 through 20-11, and 20-13, inclusive, shall be punished by imprisonment not to exceed 180 days or by a fine of not less than \$100.00 nor more than \$1,000.00, or by both such imprisonment and fine. Pursuant to section 20-8 of this chapter, the manager of regulated industries may also suspend for a period not to exceed 90 days or revoke the permit or license of any such person convicted of such an ordinance violation.

Sec. 20-19. Manager of regulated industries to enforce compliance.

In enforcing the provisions of this chapter the manager of regulated industries shall be authorized to do any of the following:

(a) To perform investigations to determine that the licensee is complying with the requirements of this chapter, and is not engaging in sales of tobacco products, rolling papers, alternative nicotine products or vapor products to minors or other illegal activities on the licensed premises;

(b) To inspect, at any reasonable time, the licensed premises, including all portions of the building thereof used in connection with the operations carried on under the cigarette license and which are in the possession and control of the licensee, and all places where the licensee may keep or store cigarettes, including all rooms, cellars, outbuildings, passageways, closets, vaults, yards and attics;

(c) To seize any and all objects, which may appear to be in violation of any provision of this chapter and to hold such objects in custody as evidence until any matter pertaining thereto is finally adjudicated;

(d) To testify and present evidence in hearings concerning the suspension or revocation of a cigarette license issued under this chapter;

(e) To conduct informal dispositions of contested cases by stipulation, consent order or default, or by agreed settlement.

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Section 6. That Chapter 50, Code of Ordinances of the City of Kansas City, Missouri, entitled Offenses and Miscellaneous Provisions, is hereby amended by repealing Section 50-235, entitled Sale or distribution of tobacco products or rolling papers to minors; possession by minors, and enacting in lieu thereof a new section of like number to read as follows:

Sec. 50-235. Sale or distribution of tobacco products, rolling papers, alternative nicotine products or vapor products to minors; possession by minors.

(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) *Minor* means a person under the age of 18.
- (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.

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- (10) *Under direct supervision* means in the plain vision of an employee or owner of a retail business during regular business hours.
- (11) *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 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.
- (12) *Vending machine* means any mechanical, electric or electronic self-service device which, upon insertion of money, token or any other form of payment, dispenses products.

(b) Required sign stating violation of state law to sell tobacco products, alternative nicotine products or vapor products to minors under age 18; display of sign required on tobacco product, rolling paper, alternative nicotine product or vapor product displays and vending machines; control of tobacco products.

- (1) The owner of an establishment at which tobacco products, rolling papers, alternative nicotine products or 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 products, rolling papers, alternative nicotine products or vapor products are sold and on every vending machine where tobacco products, rolling papers, alternative nicotine products or 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 state 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 eighteen or for such person to purchase, attempt to purchase or possess 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 18."
- (2) Further, all such vending machines shall be under direct supervision of the owner of the establishment or an employee of the owner unless such

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vending machine is located in a place where persons under the age of 18 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, rolling paper, alternative nicotine product or vapor product in any way which allows a customer to access such tobacco product, rolling paper, alternative nicotine product or vapor product 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 tobacco products, rolling papers, alternative nicotine products or vapor products or distributing tobacco product, rolling paper, 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 18.
- (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 or vapor products to minors, failure to display required signs, penalties; what persons are liable; family members exempt; when.

- (1) It shall be unlawful for any person to sell or distribute any tobacco products, rolling papers, alternative nicotine products or vapor products to any minor or allow such sale or distribution. This subsection shall not apply to the distribution by family members on property that is not open to the public.
- (2) It shall be unlawful for any employee or owner of an establishment where any vending machine is located to permit or allow any minor to purchase or otherwise obtain any tobacco products, rolling papers, alternative nicotine products or vapor products from such vending machine.
- (3) It shall be unlawful for any person to distribute tobacco product, rolling paper, alternative nicotine product or vapor product samples 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.
- (4) If a sale is made by an employee of the owner of an establishment in violation of subsection (d), the employee, the manager or other person in charge or control of the establishment at the time of the sale and owner of

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the establishment shall be guilty of the offense. If a vending machine is operated or located in violation of subsection (b), the manager or other person in charge or control of the establishment and the owner of the establishment shall be guilty of the offense. If a sample is distributed by an employee of a company conducting the distribution, such employee and the owner of the company shall be guilty of the offense.


(e) *Possession or use of tobacco products, rolling papers, alternative nicotine products or vapor products by minors unlawful.*

- (1) It shall be unlawful for any minor to knowingly possess or use any tobacco products, rolling papers, alternative nicotine products or vapor products, and any tobacco products, rolling papers, alternative nicotine products or vapor products possessed by a minor are hereby declared to be contraband and may be seized by a law enforcement officer and destroyed in order to protect the public health.
- (2) It shall be unlawful for any minor to obtain or attempt to obtain any tobacco products, rolling papers, alternative nicotine products or vapor products by misrepresentation of age or by any other method.
- (3) It shall be prima facie evidence for purposes of this chapter that the substance within a package or container is a tobacco product, rolling papers, alternative nicotine product or vapor product if the product package or container has affixed to it a manufacturer's label which identifies it as such.

(f) *Penalty: continuing violations.*

- (1) Any person found guilty of violating any provision of subsections (b) or (d) of this section shall, for each offense, be punished by imprisonment not to exceed 180 days or by a fine of not less than \$100.00 nor more than \$1,000.00 or by both such imprisonment and fine. Each violation of any provision of subsections (b) or (d) of this section shall constitute a separate and distinct offense.
- (2) Any 17 year old minor found guilty of violating any provision of subsection (e) of this section shall, for each offense, be punished by a fine of not more than \$100.00.

Approved as to form and legality:

for 
Kathy Adams
Assistant City Attorney



Authenticated as Passed

By James Mayor

Marilyn Sandoz City Clerk

JUL 16 2015

Date Passed