



Bill No. 4056

Ordinance No. _____

INTRODUCED BY

ALDERMEN UTT, FINLEY, STALLMANN, ROACH, FLEMING, LEAHY, KERLAGON, BULLINGTON

AN ORDINANCE AMENDING THE CITY OF BALLWIN'S CODE OF ORDINANCES WITH REGARD TO DISTRIBUTION AND POSSESSION OF TOBACCO AND TOBACCO PRODUCTS.

WHEREAS, Article VIII of Chapter 17 of the City of Ballwin's Code of Ordinances establishes violations related to the distribution and possession of tobacco and tobacco products to persons under the age of 18; and

WHEREAS, St. Louis County adopted Ordinance No. 26522 in 2016, raising the age for purchasing tobacco products and electronic smoking devices from 18 years of age to 21 years of age. The St. Louis County Code provides that Sections 602.300 through 602.370 (wherein Ordinance No. 26522 was codified) shall apply throughout St. Louis County, except within cities having both a population of 75,000 or more and an organized health department; and

WHEREAS, on December 20, 2019 President Donald Trump signed legislation raising the federal age to buy tobacco products from 18 to 21; and

WHEREAS, because the St. Louis County Ordinance and Federal law supersede local laws, the City's Code of Ordinances needs to be amended to conform to such legislative change;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BALLWIN, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. Section 17-201 of the Code of Ordinances of the City of Ballwin shall be amended as follows:

Sec. 17-201.- 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.



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

Minor. A person under the age of 21 years.

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, 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. 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 2. Section 17-202 of the Code of Ordinances of the City of Ballwin shall be amended as follows:

Sec. 17-202.- Unlawful to sell or distribute tobacco products, alternative nicotine products, vapor products, or rolling papers to minors—Vending machine requirements.

(a) It shall be unlawful for any person to sell, provide or distribute tobacco products, alternative nicotine products, vapor products, or rolling papers to persons under 21 years of age.



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- (b) All vending machines that dispense tobacco products, alternative nicotine products, vapor products, or rolling papers shall be located within the unobstructed line of sight and under the direct supervision of an adult responsible for preventing persons less than 21 years of age from purchasing any tobacco product, alternative nicotine product, vapor product, or rolling papers 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 21 years of age are not permitted or are 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 (e) of this section. A determination of non-compliance may be made by a local law enforcement agency or the division of liquor 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 minor 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 17-204 of this article shall be penalized as follows:
- (1) For the first offense, \$25.00;
 - (2) For the second offense, \$100.00; and
 - (3) For a third and subsequent offenses, \$250.00.
- (e) Any owner of the establishment where tobacco products, alternative nicotine products, vapor products, or rolling papers 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 minors. Such training program must be attended by all employees who sell tobacco products, alternative nicotine products, or vapor products to the general public;



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- (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 minors; and
 - (3) Such in-house or other tobacco compliance training meets the minimum training criteria, which shall not exceed a total of 90 minutes in length, established by the division of liquor control.
- (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, vapor products, or rolling papers are available for sale if:
- (1) Four 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 operated in violation of Section 17-204, 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 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 21 years of age or older.

Section 3. Section 17-203 of the Code of Ordinances of the City of Ballwin shall be amended as follows:

Sec. 17-203. - Minors prohibited from purchase or possession of tobacco products, alternative nicotine products, vapor products or rolling papers—Misrepresentation of age.

- (a) No person less than 21 years of age shall purchase, attempt to purchase or possess cigarettes, other tobacco products, alternative nicotine products, vapor products, or rolling papers unless such person is an employee of a seller of cigarettes, tobacco products, alternative nicotine



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products, or vapor products and is in such possession to effect a sale in the course of employment or an employee of the division of liquor control for enforcement purposes pursuant to subsection (5) of RSMo 407.934.

- (b) Any person less than 21 years of age shall not misrepresent his/her age to purchase cigarettes, tobacco products, alternative nicotine products, vapor products, or rolling papers.
- (c) 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, vapor products, or rolling papers 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, vapor products, or rolling papers confiscated and shall complete a tobacco education or smoking cessation program, if available.

Section 4. Section 17-204 of the Code of Ordinances of the City of Ballwin shall be amended as follows:

Sec. 17-204. - Retail sales tax license required for sale of tobacco products, alternative nicotine products, vapor products or rolling papers—Display of sign required where.

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

- (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, or vapor products are sold and on every vending machine where tobacco products, alternative nicotine products, or vapor products are purchased a sign that shall:
 - (1) 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 TWENTY-ONE OR FOR SUCH PERSON TO PURCHASE, ATTEMPT TO PURCHASE OR POSSESS CIGARETTES, OTHER



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TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR PRODUCTS"; and

- (2) 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."

Section 5. Section 17-206 of the Code of Ordinances of the City of Ballwin shall be amended as follows:

Sec. 17-206. - 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, 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 21 years.
- (b) The operator's or chauffeur's license issued pursuant to the provisions of RSMo 302.177, 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 RSMo 302.181, 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 liquor control or any owner or employee of an establishment that sells tobacco, alternative nicotine products, vapor products, or rolling papers for the purpose of aiding the agent, owner or employee to determine whether or not the person is at least 21 years of age when such person desires to purchase or possess tobacco products, alternative nicotine products, vapor products, or rolling papers. 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) No person 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.
- (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 17-202 of this article. No person shall be liable for more than one violation of subsections (b) and (c) of section 17-202 on any single day.



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Section 6. Sections 17-63 and 17-66 of the Code of Ordinances of the City of Ballwin are hereby repealed.

Section 7. This ordinance shall take effect and be in full force from and after its passage and approval.

PASSED this ____ day of _____, 2020.

TIM POGUE, MAYOR

APPROVED this ____ day of _____, 2020.

TIM POGUE, MAYOR

ATTEST: _____
ROBERT KUNTZ, CITY ADMINISTRATOR