

One-rdg. _____
P. Hrngs. _____
Pgs. _____
Filed 06-11-19

Sponsored by Ollis, Hosmer,
Lear, and McGull

First Reading _____
AMENDED
COUNCIL BILL 2019-142

Second Reading _____
GENERAL ORDINANCE _____

AN ORDINANCE

1 AMENDING the Springfield City Code, Chapter 58, 'Health and Sanitation,' by adopting
2 Article XII, 'Tobacco 21 Act,' in order to prohibit the sale of tobacco
3 products, alternative nicotine products, and vapor products to anyone
4 under 21 years of age; and amending Chapter 78, 'Offenses and
5 Miscellaneous Provisions,' by amending Section 78-5, 'Sale of tobacco
6 products to persons under 18 years of age,' Section 78-6, 'Sale of tobacco
7 products through vending machines,' and Section 78-7, 'Packaging of
8 tobacco products; distribution of free samples; manner of display and
9 sale," and moving said sections to Chapter 58 as part of the Tobacco 21
10 Act. (Recommended by Plans and Policies Committee.)
11 _____
12

13 WHEREAS, the use of tobacco products contributes to lung disease, heart
14 disease, and mental health issues, all of which have been identified by the Springfield-
15 Greene County Health Department as priority health issues; and
16

17 WHEREAS, data demonstrates that 96 percent of current adults who smoke
18 started using tobacco before the age of 21, and 65 percent of youth who use e-
19 cigarettes reported using other tobacco products in the last month; and
20

21 WHEREAS, the Institutes of Medicine found that programs like Tobacco 21
22 reduce smoking rates by 25 percent in those 15 to 17 years of age and 15 percent
23 among those 18 to 20 years of age. This reduction in youth initiation of tobacco
24 products will result in less tobacco-related illness and death within the City of
25 Springfield.
26

27 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
28 SPRINGFIELD, MISSOURI, as follows, that:
29

30 Section 1 – The Springfield City Code Chapter 78, 'Offenses and Miscellaneous
31 Provisions' is hereby amended by moving Section 78-5, 'Sale of tobacco products to
32 persons under 18 years of age,' Section 78-6, 'Sale of tobacco products through
33 vending machines,' and Section 78-7, 'Packaging of tobacco products; distribution of

34 free samples; manner of display and sale,' to Chapter 58, as part of the Tobacco 21 Act,
35 and amending said sections as set forth in Section 2 below.

36
37 Section 2 – The Springfield City Code, Chapter 58, 'Health and Sanitation' is
38 hereby amended by adopting Article XII, "Tobacco 21 Act' as follows:

39
40 (Note: Language to be added is underlined; language to be deleted is ~~stricken~~.)

41
42 Article XII. – TOBACCO 21 ACT

43
44 Sec. 58-1050. – Title.

45
46 This Article shall be known as the "Tobacco 21 Act."

47
48 Sec. 58-1051. - Definitions.

49
50 The following words, terms, and phrases, when used in this Article, shall have
51 the meanings ascribed to them in this section, except where the context clearly
52 indicates a different meaning:

53
54 Alternative Nicotine Product means any non-combustible product containing
55 nicotine that is intended for human consumption, whether chewed, absorbed, dissolved
56 or ingested by any other means. The term does not mean any vapor product, tobacco
57 product or any product regulated as a drug or device by the United States Food and
58 Drug Administration under Chapter V of the Food, Drug and Cosmetic Act or any
59 amendment thereto.

60
61 Department means the Springfield-Greene County Health Department.

62
63 Proof of age means a driver's license or other documentary or written evidence
64 that the individual is 21 years of age or older.

65
66 Samples means a tobacco product, alternative nicotine product or vapor product
67 distributed to members of the general public at no charge for purposes of promoting the
68 product.

69
70 Sampling means the distribution of samples to members of the general public in
71 a public place.

72
73 Tobacco or Tobacco Products means any substance containing tobacco leaf,
74 including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or
75 dipping tobacco, and also means smokeless tobacco products, hookah tobacco and
76 cigarette papers. The term does not include alternative nicotine or vapor products.

77
78 Vapor Product means any non-combustible product with or without nicotine that
79 employs a heating element, power source, electronic circuit or other electronic,

80 chemical means, regardless of shape or size, which can be used to produce vapor with
81 or without nicotine in a solution or other form. The term includes any electronic
82 cigarette, electronic cigar, electronic cigarillo, electronic pipe or similar product or
83 device, and any vapor cartridge or other container of nicotine in a liquid solution or other
84 form that is intended to be used with or in an electronic cigarette, electronic cigar,
85 electronic cigarillo, electronic pipe or similar product or device. The term does not
86 include alternative nicotine or tobacco products.

87
88 Vending machine means any mechanical, electric or electronic self-service
89 device which, upon insertion of money, tokens or any other form of payment, dispenses
90 tobacco products, alternative nicotine products, or vapor products.

91
92 Sec. 58-105278-5. - Sale of tobacco products to persons under 2148 years of age.

93
94 It shall be unlawful for any person to give, barter, sell, cause to be sold, buy for,
95 distribute samples of or furnish in the City-cigarettes, cigarette wrappers, chewing
96 tobacco, cigars, tobacco or any other tobacco products, alternative nicotine products, or
97 vapor products to any person under 21 years of age a minor. For purposes of this
98 section, a minor shall be deemed to be a person under 18 years of age.

99
100 Sec. 58-1053. - Proof of age.

101
102 A person selling or distributing tobacco products, alternative nicotine products, or
103 vapor products shall require proof of age from any prospective purchaser or recipient
104 unless such person has reasonable and certain knowledge that the prospective
105 purchaser or recipient is 21 years of age or older.

106
107 Sec. 58-1054. - Sign required for sale of tobacco products, alternative nicotine
108 products, and vapor products.

109
110 It shall be unlawful for any person to give, barter, sell, cause to be sold,
111 distribute, furnish or permit the sale or distribution of tobacco products,
112 alternative nicotine products, or vapor products, unless the premises upon which
113 such items are sold or distributed prominently displays a sign which shall contain
114 in red lettering at least one-half inch high on white background:

115
116 “IT IS A VIOLATION OF THE LAW FOR TOBACCO PRODUCTS,
117 ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR PRODUCTS TO BE
118 SOLD TO ANY PERSON UNDER THE AGE OF 21.”

119
120 Sec. 58-105578-6. - Sale of tobacco products, alternative nicotine products, or vapor
121 products through vending machines.

122
123 (a) *Prohibited.* Except as otherwise provided under this section, it shall be
124 unlawful for any person to sell cigarettes, cigars, pipe tobacco and
125 smokeless tobacco, or tobacco products, alternative nicotine products, or

126 vapor products that are suitable for dipping or chewing, through a vending
127 machine.

128
129 (b) *Definition.* For purposes of this section, the term “vending machine”
130 means any mechanical, electric or electronic self-service device which,
131 upon the insertion of money, tokens or other form of payment,
132 automatically dispenses tobacco products, alternative nicotine products, or
133 vapor products.

134
135 (c) *Exceptions.* Vending machines are permitted if that are located in facilities
136 where the retailer ensures that no person younger than 18 years of age is
137 present or permitted to enter at any time are permitted.

138
139 (1) In areas of factories, businesses, offices or other places that are not
140 open to the public;

141
142 (2) In places that are open to the public but to which persons under the
143 age of 21 years are denied access;

144
145 (3) In other places, but only if the machine:

146
147 a. Is under the continuous active supervision of the owner or
148 lessee of the premises or an employee thereof; or

149
150 b. Can be operated only by the activation of an electronic switch
151 by the owner or lessee of the premises or an employee
152 thereof prior to such purchase; and

153
154 c. Is inaccessible to the public when the establishment is
155 closed.

156
157 (4) In any place where continuous active supervision of a vending
158 machine, or activation of an electronic switch, is required by
159 subsection (c)(3) of this section, the person responsible for that
160 supervision or the activation of the switch shall demand proof of
161 age from a prospective purchaser unless such person has
162 reasonable and certain knowledge to believe that the prospective
163 purchaser is 21 years of age or older.

164
165 Sec. ~~58-105678-7~~. – Packaging of tobacco products; distribution of free samples of
166 tobacco products, alternative nicotine products, or vapor products; manner of display
167 and sale.

168
169 It shall be unlawful for any person, including any retailer, or their agent, to:

170
171 (1) Sell cigarettes or smokeless tobacco, alternative nicotine products,

172 or vapor products except in the original package distributed by the
173 manufacturer.

174
175 (2) Distribute or cause to be distributed any free samples of ~~cigarettes~~
176 or smokeless tobacco products, alternative nicotine products, or
177 vapor products.

178
179 (3) Sell ~~cigarettes and smokeless tobacco products, alternative~~
180 nicotine products, or vapor products in any way except in a direct,
181 face-to-face exchange between the retailer and the consumer.
182 Retailers shall display, store and hold for sale cigarettes and
183 smokeless the tobacco products, alternative nicotine products, or
184 vapor products in such a manner that they are accessible only to
185 employees of such retailer.

186
187 Sec. 58-1057. - Enforcement.

188
189 (a) The Department shall have the authority to enforce this Article in a manner
190 that can reasonably be expected to reduce the extent to which tobacco
191 products, alternative nicotine products, or vapor products are sold or
192 distributed to persons under the age of 21 years and shall conduct a
193 minimum of one random, unannounced enforcement check per year at
194 locations where tobacco products, alternative nicotine products, or vapor
195 products are sold or distributed, which will be a compliance check
196 involving a person under the age of 21 years.

197
198 (b) Persons under the age of 21 years may be enlisted to test compliance with
199 sections 58-1052 and 58-1054 to 58-1056; provided, however, that
200 persons who are under the age of 18 may be used to test compliance only
201 if written consent of such person's parents or parent or lawful guardian is
202 on file with the Department, and only under the auspices and supervision
203 of the Department.

204
205 Sec. 58-1058. – Permit Required.

206
207 (a) Within sixty days of the effective date of this Article, it shall be unlawful for
208 any person to barter, sell, cause to be sold, distribute, furnish or permit the
209 sale or distribution of tobacco products, alternative nicotine products, or
210 vapor products unless that person has obtained a permit to sale or
211 distribute such products from the City. No fee shall be assessed for such
212 permit unless otherwise authorized by law. A permit shall be valid for one
213 year or the remaining portion of a calendar year and expire on December
214 31 of each year. A permit must be renewed annually and shall be required
215 for each location at which tobacco products, alternative nicotine products,
216 or vapor products are sold or distributed. This permit shall be in addition to
217 any other permit or license required by other local, state, or federal

218 government.

219
220 (b) It shall be unlawful for any person required by the provisions of this Article
221 to secure a permit to advertise to give, barter, sell, cause to be sold,
222 distribute, furnish or permit the sale or distribution of tobacco products,
223 alternative nicotine products, or vapor products without first securing a
224 permit. The listing in an advertisement of an address which is inside the
225 city or a telephone number for a phone located inside the city shall
226 constitute prima facie evidence that the person is engaged in the activity
227 that is advertised. For purposes of this section, advertising means the use
228 of any handbill, billboard, sign, newspaper, radio, loudspeaker, television,
229 telephone listing, or other message or device whereby the services or
230 products are offered or held out to the public.

231
232 (c) Permits shall be subject to denial, nonrenewal, and revocation pursuant to
233 the procedure described for licenses in Section 70-51. Permits may be
234 denied, not renewed, or revoked for failure to comply with the
235 requirements of this Article or any other applicable section of the City
236 Code. A permit shall not be issued when the City has reason to believe
237 the issuance of the permit will result in the operation of a business in
238 violation of this Code.

239
240 Sec. 58-1059. – Penalties.

241
242 (a) Any person, except as described in (b) of this section, including but not
243 limited to, a permit holder or agent of that permit holder, that violates any
244 provision of Section 58-1052 or Sections 58-1054 through Section 58-
245 1056 shall be punished by:

246
247 (1) A fine of not less than \$250.00 for the first violation within a three-
248 year period;

249
250 (2) A fine of not less than \$500.00 for the second violation and any
251 additional violation within a three-year period.

252
253 (b) Any employee of a permit holder that violates any provision of Section 58-
254 1052 or Sections 58-1054 through Section 58-1056 shall be punished by:

255
256 (1) A fine of not less than \$50.00 for the first violation within a three-
257 year period;

258
259 (2) A fine of not less than \$100.00 for the second violation and any
260 additional violation within a three-year period.

261
262 (c) If three or more violations occur at a permitted location, or are committed
263 by a permit holder, any employee or agent of a permit holder, or any

264 combination thereof, the permit shall be subject to revocation or
265 nonrenewal as set forth in this Article.

266
267 (d) Any person who sells tobacco products, alternative nicotine products, or
268 vapor products without a license required by Chapter 70 or without a
269 permit required by this Article shall be punished by a fine of not less than
270 \$500.00 and not more than \$1,000.00 or by imprisonment in jail for a
271 period not exceeding 180 days, or both such fine and imprisonment.

272
273 (e) For purposes of determining the liability of a person controlling franchises
274 or business operations in multiple locations for a second or subsequent
275 violation under this section, each individual franchise or business location
276 shall be deemed a separate entity.

277
278 Section 3 – Savings Clause. Nothing in this Ordinance shall be construed to
279 affect any suit or proceeding now pending in any court or any rights acquired, or liability
280 incurred nor any cause or causes of action accrued or existing, under any act or
281 Ordinance repealed hereby, or shall any right or remedy of any character be lost,
282 impaired, or affected by this Ordinance.

283
284 Section 4 – Severability Clause. If any section, subsection, sentences, clause, or
285 phrase shall not affect the validity of the remaining portions of this Ordinance. City
286 Council hereby declares that it would have adopted this Ordinance and each section,
287 subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or
288 more sections, subsections, sentences, clauses, or phrases be declared invalid.

289
290 Section 5 – This Ordinance shall be in full force and effect from and after
291 passage by City Council.

292
293 Passed at meeting: _____

294
295 _____
296 Mayor

297
298 Attest: _____, City Clerk

299
300
301 Filed as Ordinance: _____

302
303
304 Approved as to form: Don Willard, Assistant City Attorney

305
306
307 Approved for Council action: Jason A. Hays, City Manager

SUPPLEMENTAL EXPLANATION TO COUNCIL BILL 2019-142

FILED: 07-02-19

ORIGINATING DEPARTMENT: Law

BACKGROUND: At the July 1, 2019, City Council amended Council Bill 2019-142 by striking the text of lines 171 and 172 and replacing that text with the following:

(1) Sell cigarettes or smokeless tobacco, alternative nicotine products, or vapor products except in the original package distributed by the manufacturer.

and by striking the text of lines 181 to 183 and replacing that text with the following:

Retailers shall display, store and hold for sale cigarettes and smokeless the tobacco products, alternative nicotine products, or vapor products in such a manner that they are accessible only to employees of such retailer.

Submitted by:

Approved by:


Rhonda Lewsader, City Attorney


Jason Gage, City Manager

EXPLANATION TO COUNCIL BILL 2019-142

FILED: 06-11-19

ORIGINATING DEPARTMENT: Health

PURPOSE: Amending the Springfield City Code, Chapter 58, 'Health and Sanitation,' by adopting Article XII, 'Tobacco 21 Act,' in order to prohibit the sale of tobacco products, alternative nicotine products, and vapor products to anyone under 21 years of age; and amending Chapter 78, 'Offenses and Miscellaneous Provisions,' by amending Section 78-5, 'Sale of tobacco products to persons under 18 years of age,' Section 78-6, 'Sale of tobacco products through vending machines,' and Section 78-7, 'Packaging of tobacco products; distribution of free samples; manner of display and sale," and moving said sections to Chapter 58 as part of the Tobacco 21 Act. (Recommended by Plans and Policies Committee.)

BACKGROUND: Despite many gains in tobacco control over the last twenty years, tobacco continues to be a significant challenge in Springfield. The smoking rate in Springfield is 25%, compared to a national rate of 16%. Additionally, the nine worst performing Census Tracts in Springfield, with a population of nearly 29,000, have a smoking rate of 33%. High tobacco use rates contribute to and exacerbate all three of Springfield's priority health issues: lung disease, heart disease, and mental health.

Of current adults who smoke, 96% started using tobacco before the age of 21. In Greene County, among middle and high school students, 5% smoke cigarettes and 14% use e-cigarettes. Tobacco products, especially e-cigarettes, are deceptive and enticing to youth. Youth are commonly unaware that all e-cigarettes contain nicotine (63% in one study); products are designed and marketed highlighting the cultural significance of technology; and 65% of youth who use e-cigarettes reported using other tobacco products in the last month. These elements combine to addict youth to nicotine in tobacco.

Tobacco 21, which raises the minimum legal sales age from 18 years old to 21 years old, has proven effective in decreasing tobacco rates. The Institutes of Medicine found Tobacco 21 reduced smoking rates by 25% in 15-17 year old's and 15% among 18-20 year old's. This reduction in youth initiation of tobacco products will result in less tobacco-related illness and death in Springfield.

The Plans and Policies Committee voted to send this to Council for consideration at a meeting held on May 23, 2019. Staff recommends approval.

Submitted by:

Approved by:



Clay Goddard, Director of Health



Jason Gage, City Manager