

AN ORDINANCE TO AMEND THE MUNICIPAL CODE RELATING TO TOBACCO AND VAPORIZING PRODUCT REGULATIONS

WHEREAS, the Board of Aldermen has deemed it appropriate to amend the Municipal Code to change minimum age requirements in the tobacco and vaporizing product provisions from eighteen (18) to twenty-one (21) years of age.

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

SECTION 1:

Section 15-53.1 of the Municipal Code of the City of Eureka is hereby repealed, and the following new Section 15-53.1 is hereby enacted in lieu thereof:

Section 15-53.1 Restrictions on the Sale and Possession of Tobacco Products

(a) As used in Subsections (a) to (f) of this Section, the following terms mean:

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

PERSON - 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 local, State or Federal Government, or any other legal entity which is recognized by law as the subject of rights and duties.

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 smokable cigarette.

SAMPLE - A tobacco 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 samples.

TOBACCO PRODUCTS - Any substance containing tobacco leaf including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco.

VENDING MACHINE - Any mechanical, electric or electronic, self-service device which, upon insertion of money, tokens, or other form of payment, dispenses tobacco products.

(b) It shall be unlawful for any person to sell, provide or distribute tobacco products or rolling papers to persons under twenty-one (21) years of age. No person or entity shall sell, provide or distribute any tobacco product or rolling papers to any persons under twenty-one (21) years of age, or sell any individual cigarettes to any person in the State of Missouri or City of Eureka, unless the product is distributed by a family member on property not open to the public. Internet and mail sales of tobacco products to any person who is less than persons under twenty-one (21) years of age is prohibited.

(c) No person less than twenty-one (21) years of age shall purchase, attempt to purchase or possess cigarettes or other tobacco products, unless the product is distributed by a family member on property not open to the public and the product is possessed on the property where the product was distributed by the family member or unless such person is an employee of a seller of cigarettes or tobacco products and is in such possession to effect a sale in the course of employment or an employee of the Missouri Division of Liquor Control or the City of Eureka Police Department for enforcement purposes. Persons under twenty-one (21) years of age will have their tobacco products confiscated. Purchasers of tobacco products are required to present prescribed identification, upon request, to demonstrate age.

(d) The owner of any business at which tobacco products or rolling papers are sold at retail shall cause to be prominently displayed in a conspicuous place at every display from which tobacco products are sold and purchased a sign that shall:

(1) Contain in red lettering at least one-half ($\frac{1}{2}$) inch high on a white background the following: "It is a violation of State and City law for cigarettes or other tobacco products to be sold or otherwise provided to any person under the age of twenty-one (21) or for such person to purchase, attempt to purchase or possess cigarettes or other tobacco products"; and

(2) Include a depiction of a pack of cigarettes at least two (2) inches high defaced by a red diagonal diameter of a surrounding red circle and the words "Under 21".

(e) The owner of any business on which the required signs are not posted shall be guilty of a violation of this Section and subject to the penalties provided herein.

(f) No person or entity shall sell individual packs of cigarettes or smokeless tobacco products unless it is displayed behind the check-out counter or it is within the unobstructed line of sight of the sales clerk or store attendant from the check-out counter.

(g) A person or entity selling tobacco products or rolling papers or distributing tobacco 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 twenty-one (21).

(h) The operator's or chauffeur's license issued pursuant to the provisions of Section 302.177, RSMo., 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 Section 302.181, RSMo., 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 Missouri Division of Liquor Control, City of Eureka Police Officer, or any owner or employee of an establishment that sells tobacco for the purpose of aiding the registrant, agent or employee to determine whether or not the person is at least twenty-one (21) years of age when such person desires to purchase or possess tobacco products procured from a registrant. 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.

(i) Any person who 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 shall be deemed guilty of a Class A Misdemeanor.

(j) Reasonable reliance on false proof of age shall be a defense against an alleged violation of this Section. The appearance of the purchaser shall not be a defense to any alleged violation of this Section.

(k) If a sale is made by an employee of the owner of an establishment in violation of this Section, the employee shall be guilty of an offense of this Section and subject to the penalties provided herein. If a sample is distributed by an employee of a company conducting the sampling, such employee shall be guilty of an offense of this Section and subject to the penalties provided herein.

(l) The penalty for violation of any provision of this Section shall be a fine of twenty-five dollars (\$25.00) for the first (1st) offense, one hundred dollars (\$100.00) for the second (2nd) offense and two hundred fifty dollars (\$250.00) for the third (3rd) and any subsequent offense.

SECTION 2:

Section 15-53.4 of the Municipal Code of the City of Eureka is hereby repealed, and the following new Section 15-53.4 is hereby enacted in lieu thereof:

13-53.4 Regulation of Vaporizing Products

(a) Definitions. As used in this section, the following terms shall have the meanings indicated:

VAPORIZING PRODUCTS

(1) Electronic devices which employ a battery to power a heating chamber that converts a liquid solution containing tobacco-derived nicotine, through a non-combustive process, into a vapor or vapor-like mist. The definition includes electronic cigarettes, electronic cigars, electronic cigarillos and electronic pipes, which are personal vaporizing products on which users inhale through a mouthpiece.

(2) Vaporizing products are not:

a. Cigarettes, as defined in 18 U.S.C. § 2341;

- b. A product that is a drug, as described in 21 U.S.C. § 321(g)(1);
- c. A product that is a device, as described in 21 U.S.C. § 321(h);
- d. A combination product, as described in 21 U.S.C. § 353(g);
- e. A tobacco product, as described in 21 U.S.C. § 387(a); or
- f. Modified risk tobacco products, as described in 21 U.S.C. § 387(k).

(b) Distribution of vaporizing products to or possession by persons under twenty-one (21) years of age is prohibited.

(1) A person, either directly or indirectly by an agent or employee, or by a vending machine owned by the person or located in the person's establishment, may not sell, offer for sale, give, or furnish any vaporizing product or any component to a person under twenty-one (21) years of age.

(2) Before selling, offering for sale, giving, or furnishing any vaporizing product, or any cartridge or component of any vaporizing product, to another person, the person selling, offering for sale, giving or furnishing the vaporizing product shall verify that the person is at least twenty-one (21) years of age by:

a. Examining from any person that appears to be under twenty-seven (27) years of age a government-issued photographic identification that establishes the person is at least twenty-one (21) years of age; or

b. For sales made through the Internet or other remote sales methods, performing an age verification through an independent, third-party age verification service that compares information available from public records to the personal information entered by the person during the ordering process that establishes the person is twenty-one (21) years of age or older.

(3) No person under twenty-one (21) years of age shall possess, purchase or attempt to purchase any vaporizing product.

a. In the furtherance or facilitation of obtaining any vaporizing product, no person under twenty-one (21) years of age shall display or use a false or forged identification card or transfer, alter, or deface an identification card.

b. It is not a violation of these provisions for a person under twenty-one (21) years of age to purchase or possess a vaporizing product if the person under the age of twenty-one (21) purchases or is given the vaporizing product from a retail seller of vaporizing products or an employee of the retail seller pursuant to a plan or action to investigate, patrol, or otherwise conduct a sting operation or enforcement action against a retail seller of vaporizing products or on any premises authorized to sell vaporizing products to determine if vaporizing products are being sold or given to persons under twenty-one (21) years of age if the sting operation or enforcement action is approved by the State of Missouri, St. Louis County or City of Eureka.

(c) Use; Where Prohibited.

(1) The use of vaporizing devices shall be prohibited where tobacco products and smoking are prohibited.

(d) Penalties.

(1) Any person under the age of twenty-one (21) who violates Subsection (b) or (c) of these provisions is guilty of an offense and shall be subject to the general penalty provisions contained in Chapter 1, Section 1-7 of the Eureka Municipal Code.

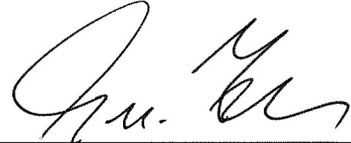
SECTION 3:

All ordinances, parts of ordinances or provisions of the Municipal Code of the City of Eureka in conflict with any provisions of this ordinance are hereby repealed.

SECTION 4:

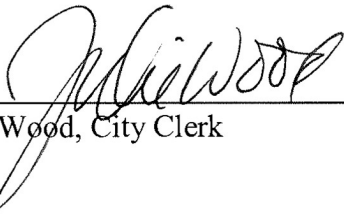
This ordinance shall be in full force and effect from and after its date of passage and approval.

PASSED AND APPROVED THIS 5TH DAY OF MARCH, 2024.



Sean M. Flower, Mayor

ATTEST:



Julie Wood, City Clerk

