BILL 2019-59

Second & Final Reading

Agenda Item

TO: Mayor and City Council

FROM: Shellie J. Blades, City Clerk

DATE: November 18, 2019

RE: Vapor Products – Minimum Age 21

Purpose

The Policy and Procedure Committee met on October 21, 2019 to discuss setting an age limit of 21 to purchase vapor products. While initially thought to be a safer practice than smoking, vapor products have shown to have alarming health hazards. The United States Surgeon General has stated that e-cigarette use among middle and high school students increased 900% during 2011-2015. The Cameron School District, Cameron Regional Medical Center and the City of Cameron have all expressed concerns about these hazards especially to our community's youth.

The Ordinance proposed will change the age to purchase vapor products to 21 years of age. The age to purchase tobacco and alternative nicotine products will remain at 18 years of age. If passed, there is a 60-day threshold before the Ordinance takes effect to allow notification and adjustment of business practices to local retailers.

Local counties and other organizations have expressed support of this Ordinance.

Recommendation

The Ordinance attached has been reviewed by Counselor Corcoran and recommended by staff and the Policy and Procedure Committee.

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AN ORDINANCE OF THE CITY OF CAMERON, MISSOURI AMENDING ARTICLE V, TOBACCO, OF CHAPTER EIGHT, OFFENSES-MISCELLANEOUS OF THE CITY OF CAMERON CODE BY SETTING A MINIMUM AGE TO PURCHASE VAPING PRODUCTS

WHEREAS, pursuant to Chapter 8, Offenses-Miscellaneous, of the City of Cameron Code the City of Cameron, Missouri has previously adopted regulations relating to the sale and distribution of cigarettes as authorized by Sections 407.924 and 407.934 of the Revised Statutes of Missouri (the "Tobacco Products Statutes"); and

WHEREAS, the Tobacco Products Statutes prohibit the sale and distribution of tobacco, alternative nicotine and vapor products to any person under 18 years of age; and

WHEREAS, Chapter 8, Article V of the City of Cameron Code currently prohibits the sale and distribution of cigarettes and tobacco products to any person under 18 years of age; and

WHEREAS, the Cameron City Council has been made aware of the harm caused by vapor products and the astronomical increase in use by middle and high school students (U.S. Surgeon General) as well as the benefits of setting the minimum age for sale and distribution of vapor products to 21 years of age and older; and

WHEREAS, Section 407.932 RSMo., and other applicable Missouri law authorizes the City to adopt more stringent ordinances and rules regarding the sale and distribution of tobacco, alternative nicotine and vapor products; and

WHEREAS, based upon the information provided and its authority pursuant to Section 407.932 RSMo., and other applicable Missouri law the Cameron City Council desires to amend the Code relating to the regulation of the sale and distribution of vapor products to minors under the age of 21.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAMERON, MISSOURI AS FOLLOWS:

Section 1. Division 1, Smoking of Article V, Tobacco of Chapter 8, Offenses-Miscellaneous shall be renamed as follows:

DIVISION 1. SMOKING, VAPING AND ALTERNATIVE NICOTINE PRODUCTS

Section 2. Section 8-208, Definitions, of Division 1, Smoking, Vaping and Alternative Nicotine Products, of Chapter 8, Offenses-Miscellaneous shall be amended to add the following definitions:

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Alternative Nicotine Products, 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.

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

Minor, a person under the age of eighteen (18) in regard to tobacco products and/or alternative nicotine products –or- a person under the age of twenty-one (21) in regard to vapor products.

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 this state or federal government or any other legal entity which is recognized by the 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.

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.

Vaping, the inhalation or ingestion of any alternative nicotine products or vapor products.

Vapor Products, means any non-combustible product 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 that may or may not contain nicotine. Vapor products include 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

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device. Vapor product does not include any alternative nicotine product or tobacco product.

Vending machine, any machine or device designated for or used for the vending of cigarettes, cigars, tobacco, tobacco products, alternative nicotine products or vapor products upon the insertion of coins, trade checks, slugs or credit/debit cards.

Section 3. Section 8-209, Smoking prohibited; exceptions, of Division 1, Smoking, Vaping and Alternative Nicotine Products of Chapter 8, Offenses-Miscellaneous shall be renamed and amended as follows:

Sec. 8-209 – Smoking, vaping and alternative nicotine products prohibited; exceptions.

(a) A person shall not smoke or partake of vapor or alternative nicotine products in a public place or in a public meeting except in a designated smoking, vaping or alternative nicotine product area.

(b) A smoking, vaping or alternative nicotine product area may be designated by persons having custody or control of public places, except in places in which smoking is prohibited by the fire marshal or by other law, ordinance or regulation.

(c) No public place shall have more than thirty percent (30%) of its entire space designated as a smoking, vaping or alternative nicotine product area.

(d) A proprietor or other person in charge of a restaurant shall designate an area of sufficient size to accommodate usual and customary demand for nonsmoking, non-vaping or non-users of alternative nicotine products.

Section 4. Section 8-211, Duties of persons having custody or control of a public place or public meeting, of Division 1, Smoking, Vaping and Alternative Nicotine Products, of Chapter 8, Offenses-Miscellaneous, shall be amended as follows:

The person having custody or control of a public place or public meeting shall:

(1) Make reasonable efforts to prevent smoking, vaping and use of alternative nicotine products in the public place or public meeting by posting appropriate signs indicating “No Smoking, Vaping or Alternative Nicotine Products” or “Smoking, Vaping or Alternative Nicotine Products Area” and arrange seating accordingly. These signs shall be placed at a height and location easily seen by a person entering the public place or public meeting and not obscured in any way;

(2) Arrange seating and utilize available ventilation systems and physical barriers to isolate designated smoking, vaping and alternative nicotine product areas;

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(3) Make a reasonable request of persons smoking, vaping or using alternative nicotine products to move to a designated smoking, vaping or alternative nicotine product area; and

(4) Allow smoking, vaping and alternative nicotine product areas of theater lobbies only.

Section 5. Section 8-212, Smoking, prohibited in city structures; exceptions, of Division 1, Smoking, Vaping and Alternative Nicotine Products, of Chapter 8, Offenses-Miscellaneous, shall be renamed and amended as follows:

Sec. 8-212 – Smoking, vaping and use of alternative nicotine products prohibited in city structures; exceptions.

(a) A person shall not smoke, vape or use alternative nicotine products within any structure owned and operated by the City of Cameron.

(b) The Chief of Police may designate a smoking, vaping or alternative nicotine use area in the police building to facilitate the investigation and processing of alleged crimes.

Section 6. Section 8-213, Prosecution, of Division 1, Smoking, Vaping and Alternative Nicotine Products, of Chapter 8, Offenses-Miscellaneous, shall be amended as follows:

In any prosecution under this division it shall not be a defense that "No Smoking, Vaping or Alternative Nicotine Products" signs were not posted if the person accused of a violation of section 8-209 or 8-212 was requested to stop smoking, vaping or using alternative nicotine products by the proprietor or other person in charge and subsequently failed to do so.

Section 7. Section 8-214, Punishment, of Division 1, Smoking, Vaping and Alternative Nicotine Products, of Chapter 8, Offenses-Miscellaneous shall be amended as follows:

The following persons shall be guilty of an infraction:

(1) A person who smokes, vapes or uses alternative nicotine products where smoking, vaping and partaking in alternative nicotine products is prohibited pursuant to the provisions of this division;

(2) A proprietor or other person in charge of a public place or public meeting who permits, causes, suffers or allows a person to smoke, vape or use alternative nicotine products in those areas where smoking, vaping and partaking in alternative nicotine products is prohibited pursuant to this division.

Section 8. Division 2, Selling of Tobacco Products, of Article V, Tobacco of Chapter 8, Offenses-Miscellaneous shall be renamed as follows:

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DIVISION 2. – SELLING OF TOBACCO, VAPOR AND ALTERNATIVE NICOTINE PRODUCTS

Section 9. Section 8-215, Definitions, of Division 2, Selling of Tobacco Products, of Article V, Tobacco, of Chapter 8, Offenses-Miscellaneous, shall be deleted and the section renamed as follows:

Sec. 8-215 – Reserved.

Section 10. Section 8-216, Sale of tobacco products; prohibited; punishment, of Division 2, Selling of Tobacco, Vapor and Alternative Nicotine Products, of Article V, Tobacco, of Chapter 8, Offenses-Miscellaneous, shall be renamed and amended as follows:

Sec. 8-216 – Sale of tobacco, vapor and alternative nicotine products; prohibited; punishment.

(a) No person shall sell any tobacco or alternative nicotine products or distribute any tobacco or alternative nicotine products or rolling papers to any minor (under 18 years of age). This section shall not apply to the distribution by family members on property that is not open to the public.

(b) No person shall sell any vapor products or distribute any vapor products to any minor (under 21 years of age). This section shall not apply to the distribution by family members on property that is not open to the public.

(c) Any person who violates subsection (a) or (b) of this section or sections 8-217, 8-218 or 8-221 of this Division shall be fined:

(1) For the first offense	$250.00
(2) For the second offense	$400.00
(3) For the third and subsequent offenses	$500.00

Section 11. Section 8-217, Signs required, of Division 2, Selling of Tobacco, Vapor and Alternative Nicotine Products, of Article V, Tobacco, of Chapter 8, Offenses-Miscellaneous, shall be amended as follows:

The owner of an establishment at which tobacco, vapor, or alternative nicotine products or rolling papers are sold at retail shall cause to be prominently displayed in a conspicuous place at every display from which tobacco, vapor, or alternative nicotine products are sold 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 OR OTHER TOBACCO OR ALTERNATIVE NICOTINE PRODUCTS TO BE SOLD TO ANY PERSON UNDER THE AGE OF 18"; and

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"IT IS A VIOLATION OF THE CODE OF THE CITY OF CAMERON FOR ANY VAPOR PRODUCT TO BE SOLD TO ANY PERSON UNDER THE AGE OF 21"

(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 18".

Section 12. Section 8-218, Product distribution to minors, prohibited, of Division 2, Selling of Tobacco, Vapor and Alternative Nicotine Products, of Article V, Tobacco, of Chapter 8, Offenses-Miscellaneous, shall be amended as follows:

(a) It shall be unlawful for any person to engage in tobacco or alternative nicotine product distribution to persons under eighteen (18) years of age.

(b) It shall be unlawful for any person to engage in vapor product distribution to persons under twenty-one (21) years of age.

Section 13. Section 8-219, Proof of age required; exception, of Division 2, Selling of Tobacco, Vapor and Alternative Nicotine Products, of Article V, Tobacco, of Chapter 8, Offenses-Miscellaneous, shall be amended as follows:

(a) A person selling tobacco or alternative nicotine products or rolling papers or distributing tobacco or alternative nicotine product samples shall require proof of age from a prospective purchaser or recipient by verifying, via a photo identification such as a driver's license, that the person is eighteen (18) years of age or older.

(b) A person selling vapor products or distributing vapor product samples shall require proof of age from a prospective purchaser or recipient by verifying, via a photo identification such as a driver's license, that the person is twenty-one (21) years of age or older.

Section 14. Section 8-220, Liability of owners and employees, of Division 2, Selling of Tobacco, Vapor and Alternative Nicotine Products, of Article V, Tobacco, of Chapter 8, Offenses-Miscellaneous, shall be amended to remove paragraph (b) and subsequently rename the existing paragraph (c) as paragraph (b).

Section 15. Section 8-221, Vending machines prohibited, of Division 2, Selling of Tobacco, Vapor and Alternative Nicotine Products, of Article V, Tobacco, of Chapter 8, Offenses-Miscellaneous, shall be created as follows:

Sec. 8-221. Vending machines prohibited.
Notwithstanding anything in this chapter to the contrary, it is unlawful to install, place or permit the use of any vending machine in any establishment which is open to minors, except in a place where the machine is not accessible to or cannot be used by minors; provided, however, that this section shall not apply to the installation and use by the

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proprietor, the proprietor's agent or employees, of vending machines behind a counter or in some place in any establishment in which access by minors is prohibited by law; provided, further, this section shall not apply to the installation and use of a vending machine in commercial buildings where the public is not usually admitted and where such machines are intended for the sole use of the employees who are not minors.

Section 16. The Mayor is authorized to sign this Ordinance approving it on behalf of the City Council of the City of Cameron, Missouri.

Section 17. The City Clerk is directed to attest to the Mayor's signature.

Section 18. This Ordinance shall be in full force and effect sixty (60) days from and after its passage and approval.

Passed on first reading this 4th day of November 2019.
Passed on second and final reading this 18th day of November 2019.

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Mayor Darlene Breckenridge

ATTEST:

_____
City Clerk

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