

**SPONSORED BY:** \_\_\_\_\_  
**INTRODUCED BY:** \_\_\_\_\_

**BILL NO. 3750**  
**ORDINANCE NO.** \_\_\_\_\_

**AN ORDINANCE AMENDING TITLE II: PUBLIC HEALTH, SAFETY AND WELFARE, CHAPTER 210: OFFENSES, ARTICLE XIII: OFFENSES CONCERNING TOBACCO BY THE AMENDMENT OF SECTIONS 210.610, 210.620, 210.630 AND 210.670, REGARDING THE MINIMUM AGE FOR SALE AND POSSESSION OF TOBACCO, ALTERNATIVE NICOTINE PRODUCTS, AND VAPOR PRODUCTS, OF THE CODE OF THE CITY OF ELLISVILLE, MISSOURI.**

**WHEREAS**, Section 2.1 of the City Charter confers upon the City of Ellisville all powers which the General Assembly of the State of Missouri has authority to confer upon any municipality, provided such powers are consistent with the Constitution of the State of Missouri and are not limited or denied either by this Charter, including all powers conferred upon the City by law; and

**WHEREAS**, on December 19, 2019, the President signed legislation amending the Federal Food, Drug, and Cosmetic Act, and raising the federal minimum age for sale of any tobacco product from eighteen to twenty-one years; and

**WHEREAS**, Missouri law presently only prohibits the sale to and possession of tobacco products, alternative nicotine products, and vapor products to persons under the age of eighteen and does not prohibit the sale to or possession of tobacco products, alternative nicotine products, and vapor products by persons between the ages of eighteen and twenty-one; and

**WHEREAS**, Section 407.932, RSMo provides that cities may enact more stringent rules and ordinances regarding possession and sale of tobacco products, alternative nicotine products, and vapor products than those set forth in state law; and

**WHEREAS**, the City Council has determined that it would be in the best interest of the City to amend its ordinances to be consistent with federal law by prohibiting the sale of tobacco products, alternative nicotine products, and vapor products to persons under the age of twenty-one, and prohibiting the possession of same by persons under the age of twenty-one; and

**WHEREAS**, a copy of the proposed Ordinance was made available for public inspection prior to its consideration by the Council.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ELLISVILLE, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:**

**SECTION 1:** Title II: Public Health, Safety and Welfare, Chapter 210: Offenses, Article XIII: Offenses Concerning Tobacco of the Municipal Code of the City of Ellisville, Missouri, is hereby amended by amending Sections 210.610, 210.620, 210.630 and 210.670 relating to the minimum age for sale and possession of tobacco products and vapor products, as set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

**SECTION 2:** All other Sections and Subsections of Title II: Public Health, Safety and Welfare, Chapter 210: Offenses, Article XIII: Offenses Concerning Tobacco, of the Municipal Code of the City of Ellisville, Missouri shall remain in full force and effect.

**SECTION 3:** This Ordinance shall be in full force and effect thirty (30) days from and after its passage and approval of the Council.

This Bill No. \_\_\_\_\_ having been read by title or in full two times prior to passage and having been duly considered and voted upon was finally passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**First Reading votes:**

**Second Reading votes:**

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

	<b>AYE</b>	<b>NAY</b>	<b>ABSTAIN</b>		<b>AYE</b>	<b>NAY</b>	<b>ABSTAIN</b>
<b>MCGRATH</b>	_____	_____	_____		_____	_____	_____
<b>COMPTON</b>	_____	_____	_____		_____	_____	_____
<b>CAHILL</b>	_____	_____	_____		_____	_____	_____
<b>SANBORN</b>	_____	_____	_____		_____	_____	_____
<b>DUFFY</b>	_____	_____	_____		_____	_____	_____
<b>BOGGS</b>	_____	_____	_____		_____	_____	_____
<b>ROEMERMAN</b>	_____	_____	_____		_____	_____	_____

**ATTEST:**

**CITY OF ELLISVILLE**

\_\_\_\_\_  
**CITY CLERK**

\_\_\_\_\_  
**MAYOR MIKE ROEMERMAN**

Approved as to legal content and form:

\_\_\_\_\_  
City Attorney

**EXHIBIT A****Section 210.610 Definitions.**

For purposes of this Section, the following definitions shall apply:

**ALTERNATIVE NICOTINE PRODUCT**

Any noncombustible 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).

**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 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.

**VAPOR PRODUCTS**

Any non-combustible product with or without nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical or mechanical means, regardless of shape or size which can be used to produce vapor or aerosol with or without nicotine in a solution or other form. Vapor products 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 liquid 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 products does not include any alternative nicotine product or tobacco product. Vapor products does not include drugs, devices or combination products authorized for sale as a cessation device by the U.S. Food and Drug Administration, as defined in the Federal Food, Drug and Cosmetic Act.

### 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.

#### Section 210.620      **Unlawful to Sell or Distribute Tobacco Products, Alternative Nicotine Products, or Vapor Products to Minors – Vending Machine Requirements.**

- A. It shall be unlawful for any person to sell, provide or distribute tobacco products, **alternative nicotine products, or vapor products** to persons under **twenty-one (21)** ~~eighteen (18)~~ years of age.
- B. All vending machines that dispense tobacco products, **alternative nicotine products, or vapor products** shall be located within the unobstructed line of sight and under the direct supervision of an adult responsible for preventing persons less than **twenty-one (21)** ~~eighteen (18)~~ years of age from purchasing any tobacco product 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 **twenty-one (21)** ~~eighteen (18)~~ years of age are not permitted or 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 Alcohol and Tobacco 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, vapor product,** or rolling papers to any **person less than twenty-one years of age** ~~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 sales clerk, owner or operator, who violates Subsections (A), (B) or (C) of this Section or Section 210.650 of this Article shall be penalized as follows:
  - 1. For the first (1st) offense, twenty-five dollars (\$25.00);
  - 2. For the second (2nd) offense, one hundred dollars (\$100.00); and
  - 3. For a third (3rd) and subsequent offense, two hundred fifty dollars (\$250.00).

- E. Any owner of the establishment where tobacco products 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;
  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 ninety (90) minutes in length, established by the Division of Alcohol and Tobacco 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, or vapor products are available for sale if:
1. Four (4) or more violations per location of Subsection (C) of this Section occur within a one (1) 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 in violation of Section 210.650, 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, vapor product to any individual less than ~~eighteen (18) years~~ **twenty-one (21)** years of age in violation of Subsections (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~~:
1. ~~Such~~ individual presented a driver's license or other government-issued photo identification purporting to establish that such individual was ~~eighteen (18) years~~ **twenty-one (21)** years of age or older.
- I. Any person adversely affected by this Section may file an appeal with the Administrative Hearing Commission which shall be adjudicated pursuant to the procedures established in Chapter 621, RSMo.

**Section 210.630 Minors Prohibited from Purchase or Possession of Tobacco Products, Alternative Nicotine Products, or Vapor Products – Misrepresentation of Age.**

- A. No person less than **twenty-one (21)** ~~eighteen (18)~~ years of age shall purchase, attempt to purchase or possess cigarettes, ~~or~~ other tobacco products, **alternative nicotine products, or vapor products** unless such person is an employee of a seller of cigarettes, ~~or~~ tobacco products, **alternative nicotine 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 Alcohol and Tobacco Control for enforcement purposes pursuant to Subsection (5) of Section 407.934, RSMo.
- B. Any person less than **twenty-one (21)** ~~eighteen (18)~~ years of age shall not misrepresent his/her age to purchase cigarettes, ~~or~~ tobacco products, **alternative nicotine products or vapor products**.
- C. Any person who violates the provisions of this Section shall be penalized as follows:
  - 1. For the first (1st) violation, the person is guilty of an infraction and shall have any cigarettes, ~~or~~ tobacco products, **alternative nicotine products, or vapor products** confiscated;
  - 2. For a second (2nd) violation and any subsequent violations, the person is guilty of an infraction, shall have any cigarettes, ~~or~~ tobacco products, **alternative nicotine products, or vapor products** confiscated and shall complete a tobacco education or smoking cessation program, if available.

**Section 210.670 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, or 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 **twenty-one (21)** ~~eighteen (18)~~.
- B. 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 Division of Alcohol and Tobacco Control or any owner or employee of an establishment that sells tobacco, **alternative nicotine products, or vapor products**, for the purpose of aiding the registrant, agent or employee to determine whether or not the person is at least **twenty-one (21)** ~~eighteen (18)~~ years of age when such person desires to purchase or possess tobacco products, **alternative nicotine products, or vapor 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.

- C. 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 misdemeanor.
- 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 210.620 of this Article. No person shall be liable for more than one (1) violation of Subsections (B) and (C) of Section 210.620 on any single day.

PROPOSED