

# City of Columbia

701 East Broadway, Columbia, Missouri 65201



**Agenda Item Number:** B 376-14

**Department Source:** Law

**To:** City Council

**From:** City Manager & Staff

**Council Meeting Date:** December 1, 2014

**Re:** Sale of Tobacco Products to Minors, Regulating the Sale of Vapor Products and Alternative Nicotine Products, and Amending the Indoor Clean Act to include Use of Vapor Products

## Documents Included With This Agenda Item

Council memo, Resolution/Ordinance

**Supporting documentation includes:** Board of Health Report, Substance Abuse Advisory Commission Report, Chadwick Proposal for Ordinance amending Chapter 11, Article X, Sec. 11-311. Sale of tobacco to minors in relation to raising the legal tobacco product sales age to twenty-one years, Chadwick Proposal for Ordinance amending the language of smoking material to include e-cigarettes in relation to Section 11-289A Article IX. Smoking in Public Places with the intent to eliminate e-cigarette use from indoor public areas

## Executive Summary

At the request of Council member Chadwick, ordinances proposing to regulate the sale of tobacco to minors and restrict the use of e-cigarettes indoors in public places have been prepared for Council consideration.

## Discussion

On September 15, 2014, Council member Chadwick provided the Council with materials requesting to raise the legal tobacco product sales age to twenty-one (21) years and also including the restriction on use of e-cigarettes in indoor public areas. These items were referred to the Substance Abuse Advisory Commission and the Board of Health, both of whose recommendations are attached.

The item is brought back to the Council in three parts as separate issues:

An ordinance has been prepared that would change the definition of minor from under the age of eighteen (18) to under the age of twenty-one (21) in the current City Code Sec. 11-311 making it unlawful to sell tobacco products or tobacco product paraphernalia to minors. Tobacco products is defined as "any substance containing tobacco leaf, including, but not limited to, cigars, cigarettes, pipe tobacco and smokeless tobacco. 'Smokeless tobacco' means any tobacco products that are suitable for dipping or chewing, such as snuff, chewing tobacco or dipping tobacco." Tobacco product paraphernalia includes cigarette wrapping papers and pipes made for smoking tobacco products.

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An ordinance has been prepared that would add a definition for both “vapor products” and “alternative nicotine products” to City Code Sec. 11-311 and would make it unlawful to sell vapor products and alternative nicotine products to minors. The definition of vapor products recommended by the Board of Health differs slightly from the definition contained in state law. The state law definition refers to products “with nicotine” but also references “any vapor cartridge,” making it unclear whether the cartridge is required to contain nicotine to fall within the regulations. The Board of Health recommended the enforcement of City Code provisions regarding the sale of products to minors be applied to all vapor products, including those that were advertised by the manufacturer as 0% nicotine.

An ordinance has been prepared that would include a prohibition on the use of vapor products in the clean indoor air regulations and would add vapor products to the list of prohibited items at the airport, on buses and in applicable sections of the fire prevention code relating to performance areas and fuel storage.

There has been a great deal of discussion about whether the City has the ability to regulate the sale of tobacco to minors under the age of twenty-one (21) as opposed to the age of eighteen (18). Although no case in the state of Missouri has been decided directly on this issue, Sec. 407.932 RSMo. is clear and unambiguous in its language: **Nothing in sections 407.925 to 407.932 shall prohibit local political subdivisions from enacting more stringent ordinances or rules.** The definition of minor for purposes of the sale of tobacco products is set forth in Sec. 407.925 RSMo., which is within the range of statutory regulations specifically authorized by the state legislature for enactment of more stringent rules.

## Fiscal Impact

Short-Term Impact: Not applicable.

Long-Term Impact: Not applicable.

## Vision, Strategic & Comprehensive Plan Impact

Vision Impact: Not Applicable

Strategic Plan Impact: Not Applicable

Comprehensive Plan Impact: Not Applicable

## Suggested Council Action

No suggestion.

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## Legislative History

1. Ordinance No. 011375 passed on February 16, 1987 established a new article to restrict smoking in certain public places used and open to the general public and in certain enclosed work areas.
2. Ordinance No. 014736 passed on January 16, 1996 restricted smoking in buildings owned or managed by the City of Columbia.
3. Ordinance No. 015928 passed on March 15, 1999 restricted smoking within twenty (20) feet of an entrance to any structure where smoking was prohibited or limited by City ordinance.
4. Ordinance No. 019252 passed on October 9, 2006 restricted smoking in restaurants and bars, and outdoor patios of restaurants and bars; seating areas and enclosed spaces of stadiums, athletic fields and arenas; limousines and taxi cabs; and bowling alleys.

  
Department Approved

  
City Manager Approved

Introduced by \_\_\_\_\_

First Reading \_\_\_\_\_

Second Reading \_\_\_\_\_

Ordinance No. \_\_\_\_\_

Council Bill No. B 376-14

### AN ORDINANCE

amending Chapter 11 of the City Code as it relates to the sale of alternative nicotine products and vapor products to minors; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. Chapter 11 of the Code of Ordinances of the City of Columbia, Missouri, is hereby amended as follows:

Material to be deleted in ~~strikeout~~; material to be added underlined.

#### ARTICLE X. SALE OF TOBACCO, ALTERNATIVE NICOTINE PRODUCTS AND VAPOR PRODUCTS TO MINORS

Sec. 11-311. Sales of tobacco products, alternative nicotine products and vapor products to minors.

(a) Definitions. For the purposes of this section, the following terms shall have the meanings designated:

- (1) Alternative nicotine product shall mean 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.
- (2) Tobacco products shall mean any substance containing tobacco leaf, including, but not limited to, cigars, cigarettes, pipe tobacco and smokeless tobacco. "Smokeless tobacco" means any tobacco products that are suitable for dipping or chewing, such as snuff, chewing tobacco or dipping tobacco, but does not include alternative nicotine products or vapor products.
- (2-3) Tobacco product paraphernalia shall include, but not be limited to, cigarette wrapping papers and pipes made for smoking tobacco products.

(3-4) Minor shall mean any person under the age of twenty-one (21) ~~eighteen (18)~~ years.

(5) Vapor product shall mean 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 with or without 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 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 product does not include any alternative nicotine product or tobacco product.

(4-6) Vending machine shall mean any mechanical, electric or electronic, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco products.

(b) Prohibitions. It shall be unlawful for any person to sell tobacco products, ~~or tobacco product paraphernalia, alternative nicotine products or vapor products~~ to a minor.

(c) Warning signs. Warning signs concerning sales of ~~tobacco~~ the products set forth in section 11-311(b) to minors shall be plainly visible at every display from which ~~tobacco~~ such products are sold. Such signs shall:

(1) Contain in red lettering at least one-half inch high on a white background "IT IS A VIOLATION OF THE LAW FOR TOBACCO PRODUCTS, ~~OR TOBACCO PRODUCT PARAPHERNALIA, ALTERNATIVE NICOTINE PRODUCTS OR VAPOR PRODUCTS~~ TO BE SOLD TO ANY PERSON UNDER THE AGE OF 21-18," 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.

(d) Vending machines; exceptions: It shall be unlawful to sell tobacco products, tobacco product paraphernalia, alternative nicotine products or vapor products through vending machines except:

(1) In factories, businesses, offices or other places not open to the general public, and

(2) In places to which persons under the age of twenty-one (21) ~~eighteen (18)~~ are not permitted access.

(e) Signs on vending machines. It shall be unlawful to offer tobacco products, tobacco product paraphernalia, alternative nicotine products or vapor products for sale through a vending machine unless the vending machine contains thereon the warning signs referred to in paragraph (c) and the owner of the vending machine or person leasing the machine does not knowingly permit the sale of such ~~tobacco~~ products to minors.

. . .

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor and Presiding Officer

APPROVED AS TO FORM:

\_\_\_\_\_  
City Counselor



## SUPPORTING DOCUMENTS INCLUDED WITH THIS AGENDA ITEM ARE AS FOLLOWS:

Board of Health Report

Substance Abuse Advisory Commission Report

Chadwick Proposal for Ordinance amending Chapter 11, Article X, Sec. 11-311. Sale of tobacco to minors in relation to raising the legal tobacco product sales age to twenty-one years

Chadwick Proposal for Ordinance amending the language of smoking material to include e-cigarettes in relation to Section 11-289A Article IX. Smoking in Public Places with the intent to eliminate e-cigarette use from indoor public areas

November 21, 2014

To: Mayor Bob McDavid  
Members of the Columbia City Council

From: Michael Szewczyk, MD  
Board of Health

Re: The sale of tobacco products and the sale and use of e-cigarettes and vapor products in the City of Columbia.

The Board of Health makes the following recommendations:

- 1) The use of e-cigarettes or vapor products should be prohibited in public places in a manner similar to Article IX. – SMOKING IN PUBLIC PLACES of the current City of Columbia Code of Ordinances.
- 2) The sale of e-cigarettes or vapor products should be restricted to those 21 and over.
- 3) The sale of tobacco products and tobacco product paraphernalia should be restricted to those 21 and over.

A full report documenting the Board's deliberations will follow.





## CITY OF COLUMBIA, MISSOURI

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### SUBSTANCE ABUSE ADVISORY COMMISSION

TO: Mayor Bob McDavid and the Honorable Members of the Columbia City Council

FROM: Chris Hawf, Chair  
Substance Abuse Advisory Commission

DATE: November 24, 2014

RE: Proposed Amendments to City code as it Pertain to Tobacco

CC: Mike Matthes, City Manager  
Sheela Amin, City Clerk  
Stephanie Browning, Public Health and Human Services Director  
Steve Hollis, Human Services Manager

City Council requested the Substance Abuse Advisory Commission (SAAC) provide recommendations regarding proposed legislation that would amend City Code that would increase the tobacco sale age to twenty-one and would add e-cigarettes to Columbia's definition of products included in Columbia's indoor air policy, prohibiting the use in public places.

The SAAC held discussions and heard public comment about the proposed legislation at its October 8, 2014 and November 12, 2014 meetings. At the November 12 meeting, the SAAC voted in favor of a motion to "raise the age for the purchase of tobacco to 21" (6 in favor, 1 against, 1 abstain) and a motion to include e-cigarettes in the indoor air policy (7 in favor, 0 against, 1 abstain).

Substance Abuse Advisory Commission ♦ c/o Division of Human Services  
1005 W. Worley ♦ P.O. Box 6015 ♦ Columbia, Missouri 65205-6015

Phone: (573) 874-7488 (voice) ♦ TTY: (573) 874-7356 ♦ Fax: (573) 874-7756

E-Mail: [HumanServices@GoColumbiaMo.com](mailto:HumanServices@GoColumbiaMo.com) Web Page: [www.GoColumbiaMo.com](http://www.GoColumbiaMo.com) (Search: **Human Services**)

Proposed Ordinance amending Chapter 11, Article X, Sec. 11-311. Sale of tobacco to minors in relation to raising the legal tobacco product sales age to twenty-one years.

Prepared by Tobacco Free Columbia  
Sponsored by Councilwoman Chadwick

Tobacco continues to kill more Columbians each year as the leading cause of preventable death, with thousands dying from the products' effects of lung and other cancers, heart disease, stroke, asthma, emphysema, pre-term delivery, and low birth weight. When used as intended tobacco will kill one-third of its users, approximately 7,500 of the over 20,000 current Columbia smokers. More than 90% of smokers take up smoking before the age of 18 and three out of four of those who initiate smoking in their teens continue as lifelong smokers. Most underage smokers obtain their cigarettes from someone between the ages of 18 to 20. Individuals who reach their mid-20s as a nonsmoker are unlikely to ever become a smoker, a fact known by the tobacco industry as they try to achieve market share. As adolescence is the time when smoking starts and is a public health concern, the Columbia/Boone County Health & Human Services along with the community's Healthy Lifestyle Action Team, are working towards their strategic goal of reducing youth smoking and smokeless tobacco use by implementing evidence based programs and sound public policies.

All 50 states currently attempt to limit access of tobacco products to youth by setting the age of sale to a minimum of 18. Legislation to further raise the sale age has been implemented in jurisdictions to decrease the amount of access that teenagers have to tobacco. The states of Alaska, Alabama, Utah and New Jersey have current laws in place setting the sale age to 19.

The city of Needham, MA was the first place in the US to enact the sale at twenty-one law in 2005. Since 2013 over a two dozen cities in Massachusetts, New York City, Englewood, NJ and the Counties of Suffolk, NY & Hawaii, HI have put policies in place to raise the sale age of tobacco. Research predicts that the impact of raising the minimum legal sale age to twenty-one will save lives by delaying the average initiation rate by 3 years; creating a prevalence decrease of over 10% in all ages between 14-20; and save the nation \$212 billion in societal costs, primarily medical.

Missouri's lax tobacco legislation allows for the lowest ranking tobacco tax of all 50 states in the nation at \$0.17 per pack, a primary factor in the state having one of the highest tobacco usage rates. With the average age of initiation in Boone County at 12.67 and 39.2% of high school students reporting they have smoked cigarettes in their lifetime, Tobacco Free Columbia seeks to look at legislation to reduce the incidence of youth smoking initiation.

Columbia currently adopts the Missouri state age of sale at 18 years. Although the state has failed several times in recent years to raise the cost, the Missouri State charter prohibits this known intervention of increased taxation of tobacco by municipalities. The City of Columbia has the ability to put effective policy in place that would curb high tobacco usage in youth that result from these lax laws by increasing the sale age to twenty-one. Age restriction policies are shown to have greater effects than increased taxation on youth smoking and will reduce adult smoking in the long-term.

Additives in today's cigarettes have increased nicotine reaction times from earlier decades, with nicotine from one puff of smoke taking 10 seconds to reach the brain. Younger smokers are more sensitive to nicotine and can become heavily addicted easier than adults. Of the almost 40% of high school students who report smoking cigarettes over

50% are already attempting to quit. Policy is the ideal intervention vehicle to act on the problem of youth smoking. Municipalities who have enforced regulations to prevent the sale of tobacco to minors have made important contributions to the decline of tobacco use among youth in the US. Raising the sale age of tobacco is proven to reduce the number of youth using tobacco by allowing for easier recognition of underage purchasers, less peer access and less cultural acceptance of youth smoking. This decrease will create lasting benefits on the prevalence of tobacco use and save thousands of lives in Columbia.

I hereby ask council to seek the recommendation of the Board of Health and the Substance Abuse Advisory Commission on legislation that would increase the tobacco sale age to twenty-one to reduce smoking and tobacco use by eighteen to twenty year olds and increase the likelihood that people in this cohort will not become smokers later in life.

TOBACCO  
**eighteen twenty-one**

Contact and Resource List:

[www.tobacco21.org](http://www.tobacco21.org)

Ginny Chadwick, First Ward Councilwoman  
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Dean Andersen, Tobacco Free Columbia Coalition Member  
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Traci Kennedy, Tobacco Free Missouri Executive Director  
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Proposed Ordinance amending the language of smoking material to include e-cigarettes in relation to Section 11-289A Article IX. Smoking in Public Places with the intent to eliminate e-cigarette use from indoor public areas.

Legislative Intent prepared by Tobacco Free Columbia  
Sponsored by Councilwoman Chadwick

The implementation of Columbia's indoor air ordinance limiting smoking in public places passed in 2006 is having significant impacts on the health of the city. The number of employees protected from secondhand smoke in the workplace increased significantly. Prohibiting smoking indoors has denormalized the act of smoking and in turn youth smoking rates have decreased. While use of traditional tobacco products has been on the decline, a new market of vapor products has emerged, electronic cigarettes or e-cigarettes. All of the largest tobacco companies have invested in the product, offering a new entry option for young people to become addicted to nicotine.

E-cigarettes mimic smoking allowing users to inhale synthetic nicotine by heating the battery and atomizing the content cartridge. FDA research has revealed that nicotine cartridges contained known toxic chemicals and carcinogens including nitrosamines. The e-cigarette user expels poisonous chemical aerosol found to contain heavy metals such as formaldehyde and diethylene glycol. Short-term use of e-cigarettes has been shown to increase respiratory resistance and impair lung function.

The CDC's National Youth Tobacco Survey shows that the number of middle and high school students using e-cigarettes more than doubled, increasing from 3.3 to 6.8 percent from 2011 to 2012. This results in an estimated 800 Columbia youth who tried e-cigarettes in 2012 with popularity continuing to grow. The products are offered in a wide variety of flavors that attract young users including cherry, sweet tart, Cowboy, Wrangler and Mojito. Unlike traditional tobacco products, marketing these products is not restricted and the use of celebrity endorsements and television advertisements has been widely initiated to recruit new users. Sales of electronic cigarettes doubled from \$300 million in 2011 to \$600 million in 2012. An August 2014 the American Journal of Public Health study found that younger individuals are more likely to initiate use of e-cigarettes than any other demographic and the use of one tobacco product, including e-cigarettes, increases the willingness to try multiple tobacco products.

The Food and Drug Association (FDA) does not currently regulate the products and has initiated the rule making process to review e-cigarette sales to minors as well as the requirement of product ingredient disclosure and product labeling. Legislation to address e-cigarette usage by state and municipal governments are being enacted. Three states and 188 municipalities currently regulate use of e-cigarettes indoors in 100% smokefree venues, including 5 communities in Missouri. The City of Columbia has a history of enacting proactive measures to protect public health and it is recommended by Tobacco Free Columbia

that the council take swift action to protect the community from the effects of these products.

A lack of peer-reviewed scientific data exists to support the claim that e-cigarettes are an effective mechanism to help smokers overcome their addiction to nicotine, while vapor products are being advertised as a cessation method to help current smokers quit. Recent research found that although 80% of users of e-cigarettes indicated that they were using the product to cut down or help quit smoking there was no evidence of an increase in cessations or a reduction of cigarettes smoked by e-cigarette users.

Use of vapor products indoors, where traditional cigarette smoking is prohibited, undermines the smokefree ordinance and can make enforcement difficult. Protecting Columbia's youth and citizens against an untested product like e-cigarettes is recommended as sound public health policy.

Thus, I hereby seek the recommendation of the Columbia Board of Health and the Substance Abuse Advisory Commission on legislation that would add e-cigarettes to Columbia's indoor air policy, prohibiting the use in public places.



Contact and Resource List:

[www.cancer.org](http://www.cancer.org)

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