BOARD BILL NO. 170  INTRODUCED BY: ALDERWOMAN FLOWERS

An ordinance to raise the age to 21 years old for sales and distribution of alternative nicotine products, and vapor products to be codified in Chapter 11 of the Revised Code of the City of St. Louis; containing definitions; establishing penalties for violations; and containing a severability and an emergency clause.

WHEREAS, 95% of smokers begin smoking before the age of 21 years old, according to a survey published by the Substance Abuse and Mental Health Services Administration; and

WHEREAS, raising the age of sales and distribution of tobacco products, alternative nicotine products, and vapor products would reduce the number of younger high school students who use them and rely on 18 and 19 year olds to buy them; and

WHEREAS, the Institute of Medicine has estimated that raising the minimum age for acquiring tobacco products to 21 years would result in a 12 percent decrease in smoking prevalence across the nation by 2100; and

WHEREAS, electronic nicotine devices such as e-cigarettes and vapor products are serving as nicotine injection systems and precursors for youth who do not smoke combustible tobacco to begin smoking, when they might never have begun smoking tobacco products otherwise; and

WHEREAS, according to the Centers for Disease Control and Prevention (CDC), use of tobacco products other than cigarettes – electronic cigarettes, hookah and smokeless tobacco has increased among middle and high school students between 2011 and 2015; and

WHEREAS, nicotine is a highly addictive substance and a neurotoxin for adolescent brains; and

WHEREAS, tobacco use is one of the leading causes of preventable death in the U.S.
BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. Sale of Alternative Nicotine Products and Vapor Products to minors – Unlawful.

A. For purposes of this chapter the following definitions shall apply:

1. “Alternative Nicotine Product” means any non-combustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved or ingested by any other means. The term does not mean 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 or any amendment thereto.

2. “Vapor Product” means any non-combustible product with or without nicotine that employs a heating element, power source, electronic circuit or other electronic, chemical means, regardless of shape or size, which can be used to produce vapor with nicotine in a solution or other form. The term 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. The term does not include alternative nicotine or tobacco products.

3. “Minor” shall mean any person under the age of twenty-one (21) years of age.
4. “Vending Machine” means any mechanical, electric or electronic self-service device which upon insertion of money, tokens or any other form of payment, dispenses tobacco products, alternative nicotine products or vapor products.

5. “Department” means the Department of Health of the City of St. Louis.

6. “Proof of Age” means a driver’s license or other documentary or written evidence that the individual is twenty-one years old or older.

B. Sale of Distribution To, Or Purchase or Receipt By Person Under 21 Years Old Prohibited.

1. No person shall sell or distribute alternative nicotine products or vapor products to any person under twenty-one (21) years old.

2. Any person found to have sold or distributed any alternative nicotine product or vapor product to a family member who is under twenty-one (21) years old shall be deemed to be in violation of subsection B (1) of this section.

3. It shall be unlawful for any person under the age of twenty-one (21) years old to represent that he or she has attained the age of twenty-one (21) years old for the purpose of purchasing, asking for in any way, or receiving alternative nicotine products or vapor products except in cases authorized by law, including as authorized by the Department of law enforcement.

4. It shall be unlawful for any person to give, lend, sell or otherwise provide any person under the age of twenty-one (21) years old any falsified
identification or identification of another person for the purpose of establishing the age of the individual as being twenty-one (21) years old or older.

5. Any person selling or distributing alternative nicotine products or vapor products shall require proof of age from the prospective purchaser or recipient is twenty-one (21) years old or older.

6. If a sale or distribution of alternative nicotine products or vapor products is made by an employee of the owner of an establishment in violation of this section, the employee acting on behalf of the owner, as well as the owner of the establishment shall be in violation of this section.

C. Sales or Distribution in Public Areas Prohibited.

No person shall sell or distribute alternative nicotine products or vapor products to any person in or on any public street, public sidewalk, park, school, playground, or other property owned by the City of St. Louis or owned by another governmental entity.

D. Vending Machines.

1. Any vending machine used for the sale or distribution of alternative nicotine products or vapor products may only dispense alternative nicotine products and/or vapor products.

2. Any vending machine must only be located in an area –

   a) where persons under the age of twenty-one (21) years old are denied access; or
b) in public places where persons under the age of twenty-one (21) years old are granted access, but only if the vending machine –

i. is located in areas of factories, businesses, offices or other places that are not open to the public; or

ii. is under the continuous active supervision of the owner or lessee of the premises or an employee thereof; or

iii. can be operated only by the activation of an electronic switch by the owner or lessee of the premise, or an employee thereof prior to such purchase; and

iv. is inaccessible to the public when the premises are closed.

E. Parental Responsibility.

It shall be unlawful for a natural or adoptive parent of a juvenile, any person having legal custody of a juvenile, or an adult who has assumed responsible custody or control of a juvenile after receiving written notice of this section to knowingly permit a juvenile to violate this section under circumstances not constituting an exception to this section.

F. Enforcement.

1. The Department may engage in activities calculated to measure and assure compliance with the provisions of this section. Private organizations and individuals, as may be designated by the Department, may engage in such activities to measure and assure compliance with the provisions of this section when such activity is authorized and approved by the Department.
2. The authority to enforce the provisions of this section is vested in the Department and in the St. Louis Metropolitan Police Department.

3. The Department may choose to utilize the provisions of Chapter 11.95 for administrative citations to enforce the provisions of this section.

4. Persons under the age of twenty-one (21) years old may be enlisted to test compliance with the provisions of this section, provided however, that juveniles who are under the age of 18 years old may be used to test compliance only if written consent of such person’s natural or adoptive parent of a juvenile, any person having legal custody of a juvenile, or an adult who has assumed responsible custody or control of a juvenile is on file with the Department and only under the auspices of the Department.

G. Prohibition of Selling, Distributing or Vending Without a Sign.

It shall be unlawful for any person to sell, distribute or vend, or permit the sale, distribution or vending of alternative nicotine products, or vapor products on premises he owns or leases unless the premises upon which such items are sold, distributed or vended prominently displays a sign which shall contain in red capital lettering at least one-half inch high on white background, and spaced so the sign is clear and readable: IT IS A VIOLATION OF THE LAW FOR ALTERNATIVE NICOTINE PRODUCTS OR VAPOR PRODUCTS TO BE SOLD OR DISTRIBUTED TO ANY PERSON UNDER THE AGE OF TWENTY-ONE (21).

If both tobacco products and alternative nicotine products or vapor products are sold, distributed, or vended, one sign may prominently be displayed which shall
contain in red lettering at least one-half inch high on white background, and
spaced so that the sign is clear and readable, the following:

IT IS A VIOLATION OF THE LAW FOR TOBACCO PRODUCTS,
LATERNATIVE NICOTINE PRODUCTS OR VAPOR PRODUCTS TO BE
SOLD OR DISTRIBUTED TO ANY PERSON UNDER THE AGE OF
TWENTY-ONE (21).

H. Penalties.

Any person who is determined to have violated any provision of this section shall
be fined not less than one hundred dollars ($100) for the first conviction; not less
than two-hundred fifty dollars ($250) for the second conviction; and five hundred
dollars ($500) for each subsequent conviction. The Department may choose to
utilize the provisions of Chapter 11.95 for administrative citations to enforce the
provisions of this section.

Severability Clause.

The provisions of this ordinance shall be severable. In the event that any provision of
this ordinance is found by a court of competent jurisdiction to be unconstitutional; the remaining
provisions of this ordinance are valid unless the court finds the valid provisions of this ordinance
are so essentially and inseparably connected with, and so dependent upon, the void provision that
it cannot be presumed that the Board of Aldermen would have enacted the valid provisions
without the void ones or unless the Court finds that the valid provisions, standing alone, are
incomplete and incapable of being executed in accordance with the legislative intent.
Emergency Clause.

This being an ordinance for the preservation of public peace, health and safety, it is hereby declared to be an emergency measure within the meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis; and therefore, shall become effective immediately upon its passage and approval of the Mayor.