

BILL NO. 19- 270

AN ORDINANCE AMENDING SECTIONS 17-4, 17-303 AND 17-307 OF ARTICLE I. GENERAL. OF CHAPTER 17 - OFFENSES OF THE CODE OF ORDINANCES OF THE CITY OF LEE'S SUMMIT, MISSOURI BY AMENDING THE DEFINITION OF THE TERM VAPOR PRODUCT; BY AMENDING THE DEFINITION OF SMOKING; BY AMENDING CERTAIN PROVISIONS RELATED TO WHO MAY BE PRESENT IN PLACES WHERE SMOKING IS ALLOWED; AND, ENACTING A NEW ARTICLE XI. VAPOR PRODUCTS OF CHAPTER 17 - OFFENSES., OF THE CODE OF ORDINANCES OF THE CITY OF LEE'S SUMMIT, MISSOURI DEALING GENERALLY WITH THE REGULATION OF THE USE OF VAPOR PRODUCTS IN CERTAIN LOCATIONS.

WHEREAS, Vaping has increased in popularity in Lee's Summit and across the United States, particularly among young people; and,

WHEREAS, Aerosol is produced during activation of a vaping device, some of which is ex-haled into the environment where nonusers can be passively exposed through inhalation, ingestion, or absorption through the skin; and,

WHEREAS, According to JAMA Pediatrics Journal from the American Medical Association, one in 4 US youths are exposed to secondhand aerosol from e-cigarettes including 4.4 million who are not current e-cigarette users; and,

WHEREAS, Exhaled/side-stream aerosol from vaping may contain heavy metals, ultrafine particles (UFP) including propanediol, volatile organic compounds (VOC), nicotine and propylene glycol, all of which pose public health risks; and,

WHEREAS, Exhaled/side-stream aerosol from vaping may also contain additional substances such as marijuana or other legal or illegal substances that have been added to the vape cartridge; and,

WHEREAS, Secondhand/passive exposure to exhaled/side-stream aerosol from vaping in an indoor setting poses a significant public health threat, particularly to children, the developing fetus and pregnant women; and,

WHEREAS, As of January 2017, 8 states and more than 500 communities, including multiple communities in Missouri and the Kansas City Metropolitan area, had adopted comprehensive indoor air laws that prohibit vaping; and,

WHEREAS, Multiple medical and public health organizations and other entities have officially recommended that communities prohibit vaping in indoor public places. These include, but are not limited to the Lee's Summit Health Education Advisory Board, Lee's Summit Cares, the U.S. Surgeon General, the World Health Organization, the American Public Health Association, the American College of Physicians, the American Academy of Family Physicians, the American Medical Association, and the American Academy of Pediatrics, (A copy of literature evidencing the same is found in Exhibits 1 through 16 attached hereto and incorporated herein by reference; and,

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WHEREAS, A 2017 survey by the Jackson County Health Department showed that 77% of Lee's Summit residents say electronic cigarette use should not be allowed inside all public places; and,

WHEREAS, A 2017 national study showed that, of people who vape and live in a jurisdiction that prohibits vaping in indoor public places, the majority (88%) do not find it difficult to refrain from vaping in places where they are not supposed to vape.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

SECTION 1. That the term *Vapor Product* as found in subsection A of Section 17-4 - Sale or distribution of tobacco products, alternative nicotine products or vapor products to those under the age of twenty-one; possession by those under the age of eighteen, of Article I. In General of Chapter 17 of the Code of Ordinances of the City of Lee's Summit, Missouri be amended to read as follows:

'Vapor product 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, which can be used to produce vapor or aerosol in a solution or other form. While many vapor products contain nicotine, the presence of nicotine is not required for a product to be considered a vapor product. 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, flavoring, or other substances 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 device.'

SECTION 2. That Section 17-4 - Sale or distribution of tobacco products, alternative nicotine products or vapor products to those under the age of twenty-one; possession by those under the age of eighteen, of Article I. In General of Chapter 17 of the Code of Ordinances of the City of Lee's Summit, Missouri be amended to add a new subsection M. to read as follows:

...

M. Nothing in this section 17-4 shall apply to any medical Marijuana Facility as defined by Article XIV of the Missouri Constitution.

...

SECTION 3. That the term "Smoking" of Section 17-303; Article 1., Chapter 17 of the Code of Ordinances of the City of Lee's Summit, Missouri be amended to read as follows:

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Smoking means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other tobacco product including but not limited to any heat-not-burn (HNB), tobacco heating products (THP) or IQOS device designed to heat certain types of heated tobacco units to produce a vapor or aerosol but without combustion, fire, ash or smoke.

...

SECTION 4. That Section 17-307. – Where smoking not regulated.; Article 1., Chapter 17 of the Code of Ordinances of the City of Lee’s Summit, Missouri be amended to read as follows:

‘Sec. 17-307. - Where smoking not regulated.

Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from the provisions of Sections 17-305 and 17-306:

- A. Private residences, except when used as a licensed child care, licensed adult day care, or licensed health care facility.
- B. Private vehicles.
- C. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty (20) percent of rooms rented to guests in a hotel or motel may be so designated.
- D. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested to the management thereof in writing to be placed in a room where smoking is permitted.
- E. Outdoor areas of places of employment.
- F. Retail tobacco stores as defined in Section 17-303 of this article in operation prior to the effective date of this article. Any new retail tobacco store or any existing retail tobacco store that relocates to another site may only qualify for this exemption if either (a) it is located in a freestanding structure occupied solely by the business or (b) it (i) is completely enclosed on all sides by solid walls extending from the floor to the underside of the floor or roof deck above; (ii) complies with all applicable fire and building code requirements; and (iii) has a separate ventilation system whereby the air from such space is immediately exhausted to an outdoor area rather than being recirculated inside, and is negatively pressurized to prevent back streaming of second-hand smoke into adjoining areas located in a freestanding structure, (c) Does not allow those under the age of 18 years old into the areas where the possession of lighted smoking materials occurs, and (d) it has posted at every entrance signage at a height and location conspicuous to persons entering the establishment, with primary lettering of not less than one inch in height clearly stating:

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"WARNING! Secondhand smoke causes coronary heart disease, lung cancer and premature death, according to the Surgeon General of the United States."

Retail tobacco stores as defined in Section 17-303 of this article in operation prior to the effective date of this article is derived shall, however, also be required to post the foregoing-described signage at every entrance at a height and location conspicuous to persons entering the establishment, with primary lettering of not less than one inch in height in order to remain exempt under this section.

- G. Private clubs as defined in Section 17-303 of this article. A private club may only qualify for this exemption if either (a) it is located in a freestanding structure occupied solely by the private club and throughout which entire premises smoking is permitted or (b) it (i) is completely enclosed on all sides by solid walls extending from the floor to the underside of the floor or roof deck above; (ii) complies with all applicable fire and building code requirements; and (iii) has a separate ventilation system whereby the air from such space is immediately exhausted to an outdoor area rather than being recirculated inside, and is negatively pressurized to prevent back streaming of second-hand smoke into adjoining areas located in a freestanding structure, (c) does not allow those under the age of 18 years old into the areas where the possession of lighted smoking materials or use of vapor products occurs and (d) it has posted at every entrance signage at a height and location conspicuous to persons entering the establishment, with primary lettering of not less than one (1) inch in height clearly stating:

"WARNING! Secondhand smoke causes coronary heart disease, lung cancer and premature death, according to the Surgeon General of the United States."

SECTION 5. Amending the Code of Ordinances of the City of Lee's Summit, Missouri by adding a new Article XI VAPOR PRODUCTS in Chapter 17 to read as follows:

"ARTICLE XI VAPOR PRODUCTS

Sec. 17.500 – Definitions. The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bar shall be defined as provided in Section 17-303 of this Code.

Distribute shall be defined as provided in Section 17-4.

Employee shall be defined as provided in Section 17-303 of this Code.

Employer shall be defined as provided in Section 17-303 of this Code.

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Enclosed area shall be defined as provided in Section 17-303 of this Code.

Permanently designated means a hotel or motel room designated as a smoking room one time or more per year.

Place of employment shall be defined as provided in Section 17-303 of this Code.

Proof of age means 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.

Public place shall be defined as provided in Section 17-303 of this Code.

Restaurant shall be defined as provided in Section 17-303 of this Code.

Sample means a product distributed to members of the general public at no cost for product promotional purposes.

Under direct supervision means in the plain vision of an employee or owner of a retail business during regular business hours.

Vapor product shall be defined as provided in Section 17-4 of this Code.

Vending machine means any mechanical electric or electronic, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses products.

Sec. 17-501. - Vapor use prohibited; Where.

- (a) No person shall use vapor products in an enclosed place of employment within the city.
- (b) No person shall use vapor products in an enclosed public place within the city.

Sec. 17-502. - Responsibilities of proprietors, owners and managers.

No person having control of a place listed in this Article shall knowingly permit, cause, suffer or allow any person to violate the provisions of this Article in that place. It shall be an affirmative defense to an alleged violation of this subsection that the

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person having control of a place has asked that the use of vapor products be stopped and has asked the person to leave the establishment if that person has failed or refused to stop the use of vapor products.

Sec. 17-503. - Exceptions.

Notwithstanding any other provision of this Article to the contrary, the following shall not be subject to the restrictions of this Article:

- (a) Private residences, not serving as enclosed places of employment or enclosed public places;
- (b) Any medical marijuana facility as defined by Article XIV of the Constitution of the State of Missouri.
- (c) Hotel and motel rooms that have been designated as a permanently designated smoking rooms.
- (d) Any place of employment of a sole proprietor with no other employee(s) or in a place of employment of any individual who is the sole employee at a facility to which the public is not invited nor in which the public is permitted or any business establishment in operation prior to the effective date of this article that does not sell or serve food or alcoholic beverages where more than 80 percent of the volume of trade or business carried on is that of the blending of tobaccos, or the sale of tobaccos, pipes, vapor products, cigars or smokers' sundries and smoking-related paraphernalia.
- (e) Any business establishment that begins operation or relocates to a new location after the effective date of this article that does not sell or serve food or alcoholic beverages where more than 80 percent of the volume of trade or business carried on is that of the blending of tobaccos, or the sale of tobaccos, pipes, vapor products, cigars or smokers' sundries and smoking-related paraphernalia provided that:
 - 1. The establishment is the sole occupant of a building that stands alone from other buildings; or
 - 2. is completely enclosed on all sides by solid walls extending from the floor to the underside of the floor or roof deck above; (ii) complies with all applicable fire and building code requirements; and (iii) has a separate ventilation system whereby the air from such space is immediately exhausted to an outdoor area rather than being recirculated inside, and is negatively pressurized to prevent back streaming of second-hand smoke into adjoining areas located in a freestanding structure; and,
 - 3. Does not allow those under the age of 18 years old into the areas where the possession of lighted smoking materials or use of vapor

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products occurs.

Sec. 17-504 - Penalty for Violation.

Any person having been found guilty of violating this article shall be punished as provided by 1-13 of the Code of Ordinances of the City of Lee’s Summit, Missouri.

Sec. 17-505 - Construction.

This Article shall be liberally construed so as to further its purposes. The provisions of this Article are severable. If any provision or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect. This Article shall not be interpreted or construed to permit smoking or the use of vapor products where it is otherwise restricted by other applicable laws.”

SECTION 6. That this ordinance shall be in full force and effect from and after the date of its passage, adoption, and approval by the Mayor.

PASSED by the City Council of the City of Lee’s Summit, Missouri, this _____ day of _____, 2020.

Mayor *William A. Baird*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

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APPROVED by the Mayor of said city this _____ day of _____, 2020.

Mayor *William A. Baird*

ATTEST:

City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

City Attorney *Brian W. Head*