CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM
Council Bill 2019-619 amending Chapter 62, Health and Sanitation, by adding a new Article X, Tobacco 21 Act.

MEETING DATE
December 2, 2019

ORIGINATING DEPT
Health Department

ATTACHMENTS
CB2019-619 Council Bill

REVIEWED BY
Dept. Head: Ryan Talken; Finance Dept. Director: Leslie Haase; City Attorney: Peter Edwards; Interim City Manager: Daniel Pekarek

SUMMARY
The Health Department requests consideration of Council Bill No. 2019-619 that authorizes an amendment to Chapter 62, Health and Sanitation, by adding a new Article X, Tobacco 21 Act.

BACKGROUND
In the 2016 Community Health Needs Assessment (CHNA) conducted by the local Community Health Collaborative (CHC) Lung Disease and Heart Disease were identified as two of the primary health issues affecting local residents. A companion document, the Community Health Improvement Plan (CHIP) was developed in response to the identified health issues and a Tobacco 21 Ordinance was listed as an initiative that should be implemented to improve the lung and heart disease rates. Shortly after, the Vision Joplin 2022 effort included the Tobacco 21 Ordinance as a recommendation in their final report to the city council for consideration.

Recently, the CHC in its 2019 CHNA report again recommended the enactment of a Tobacco 21 Ordinance. Concurrently, Vision Joplin 2022 in conjunction with One Joplin began promoting the passage of a Tobacco 21 Ordinance. Over the past several months they worked with city staff to develop language for the ordinance presented tonight.

Tobacco 21 Ordinances (T21) are considered by the Centers For Disease Control (CDC) as effective measures that communities or states can enact to reduce the rate at which youth begin tobacco use. Studies have shown that most individuals that begin tobacco use (including vaping) do so when they are teenagers. Once they begin, it is very hard to stop use, due to the addictive nature of nicotine. T21 Ordinances essentially raise the age at which tobacco or vaping products can be purchased from 18 to 21. Studies have also shown that with this delay, young adults are less likely to take up the use of these products.

FUNDING SOURCE
The source of funding is the Health Fund.

RECOMMENDATION
Staff recommends adoption of this Council Bill on First Reading.

COUNCIL BILL NO. 2019-619 ORDINANCE NO.

AN ORDINANCE amending Chapter 62, Health and Sanitation, by enacting a new Article X, Tobacco 21 Act.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

WHEREAS, the use of tobacco products contributes to lung disease, heart disease, and mental health issues, all of which have been identified by the Joplin Health Department as priority health issues; and

WHEREAS, data demonstrates that 96 percent of current adults who smoke started using tobacco before the age of 21, and 65 percent of youth who use e-cigarettes reported using other tobacco products in the last month; and

WHEREAS, the Institutes of Medicine found that programs like Tobacco 21 reduce smoking rates by 25 percent in those 15 to 17 years of age and 15 percent among those 18 to 20 years of age. This reduction in youth initiation of tobacco products will result in less tobacco-related illness and death within the City of Joplin.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

Section 1. That a new Chapter 62, Health and Sanitation, Article X, Tobacco 21 Act, is enacted as follows:

“Sec. 62-360. – 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:

(a) 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.

(b) *Department* means the City of Joplin Health Department.

(c) *Proof of age* means a driver's license or other documentary or written evidence that the individual is 21 years of age or older.

(d) *Samples* means a tobacco product, alternative nicotine product or vapor product distributed to members of the general public at no charge for purposes of promoting the product.

(e) *Sampling* means the distribution of samples to members of the general public in a public place.

(f) *Tobacco or Tobacco Products* means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco, and also means smokeless tobacco products, hookah tobacco and cigarette papers. The term does not include alternative nicotine or vapor products.

(g) *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 or without 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. Vapor product does not include drugs, devices, or combination products authorized for sale as a cessation device by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

(h) *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.

Sec. 62-361. - Sale of tobacco products to persons under 21 years of age.

It shall be unlawful for any person to give, barter, sell, cause to be sold, buy for, distribute samples of or furnish in the City tobacco products, alternative nicotine products, or vapor products to any person under 21 years of age.

Sec. 62-362. – Proof of age.

A person selling or distributing tobacco products, alternative nicotine products, or vapor products shall require proof of age from any prospective purchaser or recipient unless such person has reasonable and certain knowledge that the prospective purchaser or recipient is 30 years of age or older.

Sec. 62-363. - Sign required for sale of tobacco products, alternative nicotine products, and vapor products.

It shall be unlawful for any person to give, barter, sell, cause to be sold, distribute, furnish or permit the sale or distribution of tobacco products, alternative nicotine products, or vapor products, unless the premises upon which such items are sold or distributed prominently displays a sign which shall contain in red lettering at least one-half inch high on white background:

> "IT IS A VIOLATION OF THE LAW FOR TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR PRODUCTS TO BE SOLD TO ANY PERSON UNDER THE AGE OF 21."

Sec. 62-364. - Sale of tobacco products, alternative nicotine products, or vapor products through vending machines.

(a) Prohibited. Except as otherwise provided under this section, it shall be unlawful for any person to sell tobacco products, alternative nicotine products, or vapor products through a vending machine.

(b) Definition. For purposes of this section, the term "vending machine" means any mechanical, electric or electronic self-service device which, upon the insertion of money, tokens or other form of payment, automatically dispenses tobacco products, alternative nicotine products, or vapor products.

(c) Exceptions. Vending machines are permitted if located in places which persons under the age of 21 years are denied access.

Sec. 62-365. – Enforcement.

(a) The Department shall have the authority to enforce this Article in a manner that can reasonably be expected to reduce the extent to which tobacco products, alternative nicotine products, or vapor products are sold or distributed to persons under the age of 21 years, and shall perform at least one (1) enforcement operation each year at various permitted locations in the city.

(b) Persons under the age of 21 years may be enlisted to test compliance with sections 62-361 and 62-363 through 62-364; provided, however, that persons who are under the age of 18 may be used to test compliance only if written consent of such person's parents or parent or lawful guardian is on file with the Department, and only under the auspices and supervision of the Department.

Sec. 62-366. – Permit required.

(a) Within sixty days of the effective date of this Article, it shall be unlawful for any person to barter, sell, cause to be sold, distribute, furnish or permit the sale or distribution of tobacco products, alternative nicotine products, or vapor products unless

that person has obtained a permit to sell or distribute such products from the City. There is no permit fee associated with the permit. A permit shall be valid for one year or the remaining portion of a calendar year and expire on December 31 of each year. A permit must be renewed annually and shall be required for each location at which tobacco products, alternative nicotine products, or vapor products are sold or distributed. This permit shall be in addition to any other permit or license required by other local, state, or federal government.

(b) It shall be unlawful for any person required by the provisions of this Article to secure a permit to advertise to give, barter, sell, cause to be sold, distribute, furnish or permit the sale or distribution of tobacco products, alternative nicotine products, or vapor products without first securing a permit. The listing in an advertisement of an address which is inside the city or a telephone number for a phone located inside the city shall constitute prima facie evidence that the person is engaged in the activity that is advertised. For purposes of this section, advertising means the use of any handbill, billboard, sign, newspaper, radio, loudspeaker, television, telephone listing, or other message or device whereby the services or products are offered or held out to the public.

(c) Permits may be denied, not renewed, or revoked for failure to comply with the requirements of this Article or any other applicable section of the City Code. A permit shall not be issued when the City has reason to believe the issuance of the permit will result in the operation of a business in violation of this Code.

Sec. 62-367. – Penalties.

(a) Any person, except as described in (b) of this section, including but not limited to, a permit holder or agent of that permit holder, that violates any provision of Section 62-361 or Sections 62-363 through Section 62-364 shall be punished by:

(1) A fine of not less than $250.00 for the first violation within a three-year period;

(2) A fine of not less than $500.00 for the second violation and any additional violation within a three-year period.

(b) Any employee or agent of a permit holder that violates any provision of Section 62-361 or Sections 62-363 through Section 62-364 shall be punished by:

(1) A fine of not less than $50.00 for the first violation within a three-year period;

(2) A fine of not less than $100.00 for the second violation and any additional violation within a three-year period.

(c) If any violation occurs at a permitted location, or are committed by a permit holder, any employee or agent of a permit holder, or any combination thereof, the permit holder shall be subject to:

(1) For a first violation within a three-year period, a fine no less than $250 or by imprisonment in jail for a period not exceeding 180 days, or both such fine and imprisonment;

(2) For a second violation within a three-year period, a fine no less than $500 or by imprisonment in jail for a period not exceeding 180 days, or both such fine and imprisonment. Additionally, the permit holder shall be prohibited from distributing tobacco products for a minimum of seven days;

(3) For a third violation within a three-year period, a fine no less than $500 or by imprisonment in jail for a period not exceeding 180 days, or both such fine and imprisonment. Additionally, the permit holder shall be prohibited from distributing tobacco products for a minimum of thirty days; and

(4) For a fourth and any subsequent violations within a three-year period, a fine no less than $500 or by imprisonment in jail for a period not exceeding 180 days, or both such fine and imprisonment. Additionally, the permit holder shall be prohibited from distributing tobacco products for a period of one year.

(d) If any permittee permitted under this Article operates in violation of this Article such that five or more violations occur within a three-year period, the City Attorney may file a petition to revoke the permittee's permit. The petition shall be served on the permittee at least thirty days before any hearing. The municipal judge shall serve as the hearing officer. If the municipal judge finds that the allegations in the petition have been established by a preponderance of the evidence, the permittee's permit shall be revoked.

(e) For purposes of determining the liability of a person controlling franchises or business operations in multiple locations for a second or subsequent violation under this section, each individual franchise or business location shall be deemed a separate entity."

Section 2. Savings Clause.

Nothing in this Ordinance shall be construed to affect any suit or proceeding now pending in any court or any rights acquired, or liability incurred nor any cause or causes of action accrued or existing, under any act or Ordinance repealed hereby, or shall any right or remedy of any character be lost impaired or affected by this Ordinance.

Section 3. Severability Clause.

If any section, subsection, sentences, clause, or phrase shall not affect the validity of the remaining portions of this Ordinance. City Council hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 4. This Ordinance shall be in full force and effect from and after passage and approval by City Council.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day of _____, 2019, by a vote of _____.

_____
Gary L. Shaw, Mayor

ATTEST:

_____
Barbara J. Gollhofer,
City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards,
City Attorney