SUBJECT: City Code amendments regarding the City of Liberty’s Smoking Ordinance and enacting the Tobacco 21 initiative

RECOMMENDED ACTION:

- Approval of an Ordinance Establishing Chapter 22, Section 22.69, “Offenses Concerning Tobacco and the Sale and Distribution of Tobacco, Alternative Nicotine, and Vapor Products to Minors under the Age of 21” of the Code of the City of Liberty, Clay County, Missouri

- Approval of an Ordinance Amending Chapter 22, “Offenses – Miscellaneous”, Section 22-66, entitled “Prohibitions on Smoking in Enclosed Places of Employment and Public Places” of the Code of the City of Liberty, Clay County, Missouri

SUMMARY:

- Prohibiting the sale and distribution of tobacco, alternative nicotine, and vapor products to minors under the age of 21.
- Restrict the sale and distribution of tobacco paraphernalia to retail tobacco stores (stores where 70% of their sales are tobacco products)
- Incorporate language pertaining to non-tobacco products such as e-cigarettes, e-cigars, e-hookahs and e-pipes, and prohibiting such electronic smoking materials in enclosed places of employment and public places.

BACKGROUND:

Tobacco 21 is a national initiative urging communities to raise the minimum age of purchase of tobacco and nicotine products in an effort to reduce smoking, which has long been known to have an impact on the incidence of chronic disease and premature death. With other cities in the greater Kansas City metropolitan area having approved the change, representatives from the Healthy KC partnership approached City staff with their interest in bringing information on the initiative to Liberty City Council. A study session was held May 16, 2016 at which Healthy KC shared the health benefits resulting from the change in early adopting cities.
As of August 25, more than 15 cities across the region affecting over 1.2 million metro area residents have approved a code change raising the minimum age of purchase to 21 years, including Gladstone, Grandview, Independence, Kansas City, Bonner Springs, Lansing, Leavenworth, Leawood, Lenexa, Olathe, Overland Park, Prairie Village, Westwood Hills, Mission Hills, Westwood and the Unified Government of Wyandotte County/Kansas City Kansas, and Lee’s Summit.

The proposed ordinance would establish a new City Code Section, 22.69 prohibiting the sale and distribution of tobacco, alternative nicotine, and vapor products to minors under the Age of 21. The ordinance outlines required age verification, signage, enforcement and penalties. In addition, the proposed ordinance would also restrict the sale and distribution of tobacco paraphernalia to retail tobacco stores (stores where 70% of their sales are tobacco products).

The second ordinance is to amend Chapter 22, “Offenses – Miscellaneous”, Section 22-66, entitled “Prohibitions on Smoking in Enclosed Places of Employment and Public Places”. The proposed amendment is to incorporate language pertaining to non-tobacco electronic products such as e-cigarettes, e-cigs, e-hookahs and e-pipes. In 2016, the US Food and Drug Administration (FDA) finalized a rule extending their regulatory authority to cover all tobacco products, including vaporizers, vape pens, hookah pens, electronic cigarettes (E-Cigarettes), e-pipes, and all other ENDS. The ordinance, if approved, would prohibit activated electronic as well as lighted smoking materials in enclosed places of employment and public places.

PREVIOUS ACTION:

Representatives of the Healthy KC (Tobacco 21) initiative made a presentation to City Council at the May 16, 2016 Study Session.

At the November 3, 2009 Election, 70% of Liberty voters approved an ordinance prohibiting smoking in enclosed places of employment and public places. City Council enacted the ordinance on November 23, 2009.

POLICY ISSUE:

FINANCIAL CONSIDERATIONS:

☐ Budgeted item
  Line item:
  Amount:

☐ Non-budgeted item
  Line item:
  Amount:

☐ Not applicable

ATTACHMENTS:
Ordinance (2)
ORDINANCE NO. __________

AN ORDINANCE ESTABLISHING CHAPTER 22, SECTION 22.69 "OFFENSES CONCERNING TOBACCO AND THE SALE AND DISTRIBUTION OF TOBACCO, ALTERNATIVE NICOTINE, AND VAPOR PRODUCTS TO MINORS UNDER THE AGE OF 21" OF THE CITY CODE OF THE CITY OF LIBERTY, CLAY COUNTY, MISSOURI

BE IT ORDAINED, by the City Council of the City of Liberty, Clay County, Missouri, as follows:

SECTION I

A new Chapter 22, Section 22.69 is hereby adopted and added to the City Code of the City of Liberty, Missouri, as follows:

Chapter 22, Section 22.69, “Sale and Distribution of Tobacco, Alternative Nicotine, and Vapor Products to Minors Under the Age of 21”

Section 22.69.1 – Definitions

“Alternative Nicotine Products” means 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 drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

“Distribution” means to furnish, give, provide, or attempt to do so, whether gratuitously or for any type of compensation.

“Distributor” means a person who distributes a tobacco product.

“Electronic Smoking Device” means any device that can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking device includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

“Person” means any natural person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation, or any officer, agent, employee, factor, or any other personal representative thereof, in any capacity.

“Proof of Age” means a driver’s license or other government issued
means of identification that contains a picture of the individual and appears on its face to be valid.

“Recipient” means any person who obtains or attempts to obtain a tobacco product.

“Retail Tobacco Store” means a retail store used primarily for the sale of tobacco products and accessories and where more than seventy percent (70%) of the volume of trade or business carried on there is that of the blending of tobaccos or sales of tobaccos, cigarettes, pipes, cigars or smoking sundries and in which the sale of other products is incidental. A ‘retail tobacco store’ shall not include a tobacco department used primarily for the sale of smoking materials as part of a larger commercial establishment such as a department store, discount store or bar or retail store.

“Tobacco Product” means any product that is made from or derived from tobacco, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, snus, or an electronic smoking device. The term includes any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, or liquids used in electronic smoking devices. Tobacco product does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

“Tobacco Paraphernalia” means any instrument, utensil or device used for smoking or inhaling tobacco or similar plant products including, but not limited to, rolling papers; metal, wooden, acrylic, glass, stone, plastic or ceramic pipes; water pipes; hookahs; carburetion tubes and devices; and bongs.

“Vapor Product” means any non-combustible product that employs a heating element, power source, electronic circuit, or other electronic, chemical of mechanical means, regardless of shape or size, that can be used to produce vapor from a solution or other form that may or may not contain nicotine. Vapor product includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe or similar product or device and any vapor cartridge or container of nicotine 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. Vapor product does not include any alternative nicotine product or tobacco product.

Section 22.69.2 – Minimum Legal Sales Age

It shall be unlawful for any distributor to give, sell or otherwise distribute any tobacco, alternative nicotine, or vapor product to a person under the age of 21.
ORDINANCE NO. ______ (CONT.)

The purchase or attempted purchase of any tobacco product by or on behalf of a person under the age of 21 is prohibited.

Section 22.69.3 – Age Verification

It shall be unlawful for any distributor to give, sell or otherwise distribute any tobacco, alternative nicotine, or vapor product to any person without first verifying, via a photo identification such as a driver’s license, that the person is 21 years of age or older. No such verification is required for a person over the age of 30. That a recipient appeared to be 30 years of age or older shall not constitute a defense to a violation of this section.

Section 22.69.4 – Signage

It shall be unlawful for any distributor to give, sell or otherwise distribute any tobacco, alternative nicotine, or vapor product in any place that does not have posted in a conspicuous place a sign stating that giving, selling, or otherwise distributing cigarettes, cigarette wrappers, tobacco, alternative nicotine products, vapor products or any other tobacco products to a person under 21 years of age is prohibited by law.

Section 22.69.5 – Vending Machines Prohibited

It shall be unlawful for a retailer to sell tobacco products, alternative nicotine products, or vapor products unless it is a direct, face-to-face exchange between the retailer and the consumer.

Self-service displays, mail-order sales and other 'impersonal' modes of sales are prohibited.

Section 22.69.6 – Restrictions on Sale and Distribution of Tobacco Paraphernalia

a. The on-site display, sale or distribution of tobacco paraphernalia to consumers is hereby prohibited except in retail tobacco stores.

b. No person shall display, sell or distribute tobacco paraphernalia except as provided in this Section.

Section 22.69.7 – Enforcement

The City of Liberty or its authorized designee may conduct random, unannounced inspections at locations where tobacco products are distributed to test and ensure compliance with this ordinance.

Section 22.69.8 – Penalties

In General. Any person found to have violated this ordinance shall be subject to a fine of no less than $100 for the first offense, no less than $250 for
ORDINANCE NO. ______ (CONT.)

the second offense, and no less than $500 for each offense thereafter. Each violation, and every day in which a violation occurs, shall constitute a separate violation.

Section 22.69.9 – Exceptions and Defenses

The penalties in this ordinance do not apply to a person younger than 21 years old who purchases or attempts to purchase tobacco products while under the direct supervision of City of Liberty staff for training, education, research, or enforcement purposes.

Nothing in this ordinance prohibits an underage person from handling tobacco products in the course of lawful employment.

It shall be an affirmative defense to a violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

SECTION II

If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision of this ordinance that can be given effect without the invalid provision or application. Each invalid provision or application of this ordinance is severable.

SECTION III

This ordinance shall be in full force and effect from and after its passage by the City Council and approval by the Mayor according to law.

PASSED by Council this _______ day of _________________________, 2016.

________________________________________
MAYOR

ATTEST:

________________________________________
DEPUTY CITY CLERK

Approved by the Mayor this _______ day of _________________________, 2016.

________________________________________
MAYOR
ORDINANCE NO. ______

AN ORDINANCE AMENDING CHAPTER 22, "OFFENSES-MISCELLANEOUS", SECTION 22-66, ENTITLED "PROHIBITIONS ON SMOKING IN ENCLOSED PLACES OF EMPLOYMENT AND PUBLIC PLACES" OF THE CODE OF THE CITY OF LIBERTY, CLAY COUNTY, MISSOURI

WHEREAS, on November 3, 2009, the question of whether the City of Liberty, Missouri shall repeal Section 22-66 "Smoking prohibited in certain places in the City of Liberty, Missouri" and enact in lieu thereof a new Section 22-66 entitled "Prohibitions on smoking in enclosed places of employment and public places" was submitted to the voters; and

WHEREAS, the Clay County Board of Election Commissioners issued the Official Certification of the election results declaring passage by a vote of Yes [2,684] to No [1,127]; and

WHEREAS, the City Council of the City of Liberty enacted such Ordinance No. 9518 on November 23, 2009.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Liberty, Clay County, Missouri, as follows:

SECTION I

Section 22-66. Smoking prohibited in enclosed places of employment and public places is hereby amended as follows.

Sec. 22-66.1. Definitions.

"Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other tobacco product.

Replace with:

"Smoking" means inhaling, exhaling, burning, or carrying any lighted or activated electronic cigar, cigarette, hookah, pipe, tobacco or other nicotine delivery product.

Add:

"Nicotine Delivery Product" includes cigarettes, cigars, pipes and any other smoking product; dip, chew, snuff, snus, and any smokeless tobacco product; and, non-tobacco nicotine delivery devices such as e-cigarettes, e-cigars, e-hookahs and e-pipes.
ORDINANCE NO. _____ (CONT.)

SECTION II

Sec. 22-66.3. Prohibition of smoking in enclosed places of employment and all enclosed public places is hereby amended as follows:

(1) The possession of lighted smoking materials in any form, including, but not limited to, the possession of lighted cigarettes, cigars, pipes or other products, shall be prohibited in all enclosed public places within the City, including, but not limited to, the following places:

Replace with:

(1) The possession of lighted or activated electronic nicotine delivery products in any form, including, but not limited to, cigarettes, cigars, pipes or other products, shall be prohibited in all enclosed public places within the City, including, but not limited to, the following places:

SECTION III

Sec. 22-66.3. Prohibition of smoking in enclosed places of employment and all enclosed public places is hereby amended as follows:

(2) No one shall possess lighted smoking materials in any form, including, but not limited to, lighted cigarettes, cigars, pipes or other tobacco products in a manner that impedes entrance to or exit from a building where smoking is pursuant to this Section.

Replace with:

(2) No one shall possess lighted or activated electronic nicotine delivery products in any form, including, but not limited to, cigarettes, cigars, pipes or other products, that impedes entrance to or exit from a building where smoking is prohibited pursuant to this Section.

SECTION IV

Sec. 22-66.4. Responsibilities of proprietors, owners and managers is hereby amended as follows:

(1) A person having control of a place listed in Section 22-66.3 shall not knowingly permit, cause, suffer or allow any person to violate the provisions of Section 22-66.3 in that place. It shall be an affirmative defense to an alleged violation of this subsection that the person having control of a place has asked that the lighted cigarette, cigar, pipe or other
tobacco product be extinguished and asked the person to leave the establishment if that person has failed or refused to extinguish the lighted cigarette, cigar, pipe or other tobacco products.

Replace with:

(1) A person having control of a place listed in Section 22-66.3 shall not knowingly permit, cause, suffer or allow any person to violate the provisions of Section 22-66.3 in that place. It shall be an affirmative defense to an alleged violation of this subsection that the person having control of a place has asked that the lighted or activated electronic cigarette, cigar, pipe or other nicotine delivery product be extinguished and asked the person to leave the establishment if that person has failed or refused to extinguish the lighted or electronic cigarette, cigar, pipe or other nicotine delivery products.

SECTION IV

This ordinance shall be in full force and effect from and after its passage by the City Council and approval by the Mayor according to law.

PASSED by the City Council this ___ day of ________________, 2016.

________________________________________
MAYOR

ATTEST:

________________________________________
DEPUTY CITY CLERK

APPROVED by the Mayor this ___ day of ________________, 2016

________________________________________
MAYOR