

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF KILLEEN BY REPEALING CHAPTER 16, ARTICLE VI, POSSESSION OF TOBACCO; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, the City of Killeen, Texas is a home-rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, since the City's possession of tobacco ordinance was passed, state and federal law have changed to be more restrictive than the City's ordinance; and

WHEREAS, the City Council desires to repeal the City's ordinance as it relates to possession of tobacco;

NOW, THEREFORE IT BE ORDAINED BY THE CITY COUNCIL OF THE CITY OF KILLEEN, TEXAS:

SECTION I. That Article VI of Chapter 16 of the City of Killeen of Code of Ordinances is hereby amended to repeal Article VI as follows:

~~ARTICLE VI.—POSSESSION OF TOBACCO~~

~~Sec. 16-115.—Definitions.~~

~~(a) — *Minor*: A person less than eighteen (18) years of age.~~

~~(b) — *Tobacco product*:~~

- ~~(1) A cigar;~~
- ~~(2) Smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or as a cigarette;~~
- ~~(3) Chewing tobacco, including Cavendish, Twist, plug-serap, and any kind of tobacco suitable for chewing;~~
- ~~(4) Snuff or other preparations of pulverized tobacco; or~~
- ~~(5) An article or product that is made of tobacco or a tobacco derivative.~~

~~Sec. 16-116.—Offenses.~~

~~It is unlawful for a minor to:~~

- ~~(1) Possess a tobacco product;~~

- ~~(2) Purchase a tobacco product;~~
- ~~(3) State that he or she is eighteen (18) years of age or older in order to facilitate their purchase of tobacco products;~~
- ~~(4) Present false or misleading documentation that he or she is eighteen (18) years of age or older in order to facilitate their purchase of tobacco products.~~

~~Sec. 16-117. -- Defense.~~

~~It is a defense to prosecution under sec. 16-115 that at the time of possession of a tobacco product, the minor was a legal employee of a business holding proper permits to serve as a distributor, wholesaler, bonded agent, or retailer of tobacco products, such possession being for the purpose of carrying out the business of the permittee.~~

~~Sec. 16-118. -- Enforcement.~~

- ~~(a) — A police officer may stop and detain a person whom the officer has reasonable suspicion to believe is in violation of this ordinance. If, after investigating the circumstances, the police officer reasonably believes that an offense has occurred, the defense of sec. 16-116 does not apply, and the detained person is unable to produce convincing evidence that he or she is eighteen (18) years of age or older, the police officer may issue a citation or make an arrest for the violation of this ordinance.~~
- ~~(b) — In assessing punishment, a municipal court judge may consider community service, a tobacco education program or a teen court program. If the municipal court judge assesses participation in a tobacco education program or community service in lieu of a fine upon conviction for a violation of this ordinance he shall require the completion of the community service or tobacco education program within thirty (30) days of conviction.~~

~~Sec. 16-119. -- Penalty.~~

- ~~(a) — Any person who violates any provision of this chapter is guilty of a misdemeanor and, upon conviction, shall be fined not less than ten dollars (\$10.00) or more than five hundred dollars (\$500.00) for each offense.~~
- ~~(b) — Each day a violation is permitted to exist shall constitute a separate offense, and shall be punishable as such.~~

SECTION II. That all ordinances or resolutions or parts of ordinances or resolutions in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION III. That should any section or part of any section, paragraph or clause of this ordinance be declared invalid or unconstitutional for any reason, it shall not invalidate or impair

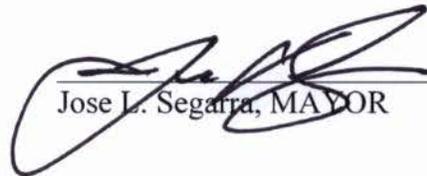
the validity, force or effect of any other section or sections or part of a section or paragraph of this ordinance.

SECTION IV. That the Code of Ordinances of the City of Killeen, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION V. That this ordinance shall be effective after its passage and publication according to law.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas, this 27 day of April, 2021, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 *et seq.*

APPROVED



Jose L. Segarra, MAYOR

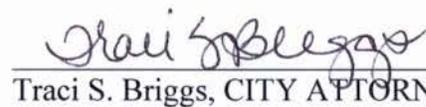


ATTEST:

APPROVED AS TO FORM:



Lucy C. Aldrich, CITY SECRETARY



Traci S. Briggs, CITY ATTORNEY

CITY COUNCIL MEMORANDUM FOR ORDINANCE

DATE: April 20, 2021
TO: Kent Cagle, City Manager
FROM: Traci Briggs, City Attorney
SUBJECT: Repealing Possession of Tobacco Ordinance

BACKGROUND AND FINDINGS:

Chapter 16, Article VI of the Code of Ordinances provides an offense for possession or purchase of tobacco by a minor, defined as a person under 18 years of age. It also has an offense for falsely claiming to be 18 or over in order to purchase tobacco or presenting false or misleading information regarding age. There have been no amendments to this ordinance since 1996.

Federal and state law have established the age of violations as younger than 21 years of age, meaning it is more restrictive than the city's ordinance. Also, these laws address a more expansive list of items that create an offense, including such things as e-cigarettes.

Attached is a draft ordinance to repeal Chapter 16, Article VI in its entirety since it is preempted by federal and state law. There will be no enforcement impact on the Killeen Police Department as officers have for some time been writing any violations under state law.

THE ALTERNATIVES CONSIDERED:

The City Council may leave the current possession of tobacco ordinance as currently codified, make amendments, or repeal the ordinance.

Which alternative is recommended? Why?

Staff recommends repealing the possession of tobacco ordinance. The federal and state law are more restrictive and preempt the city's ordinance making it unnecessary.

CONFORMITY TO CITY POLICY:

This item conforms to law and city policy.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

There is no fiscal impact related to this item.

Is this a one-time or recurring expenditure?

N/A

Is this expenditure budgeted?

N/A

If not, where will the money come from?

N/A

Is there a sufficient amount in the budgeted line-item for this expenditure?

N/A

RECOMMENDATION:

Staff recommends the City Council approve the attached ordinance to repeal Chapter 16, Article VI, possession of tobacco.

DEPARTMENTAL CLEARANCES:

Legal

ATTACHED SUPPORTING DOCUMENTS:

Ordinance