

SUBSTITUTE NO. 1 TO ORDINANCE NO. 18-056

**AN ORDINANCE TO AMEND CHAPTER 5 OF THE CITY CODE REGARDING
BUSINESSES**

**Rev. 1
#4610**

WHEREAS, City Council has enacted Chapter 5 of the City Code setting forth requirements for businesses; and

Sponsor:

**Council
Member
McCoy**

WHEREAS, the City has an interest in protecting the safety and well-being of children within the City; and

Co-sponsors:

**Council
Member
Dixon
Oliver
Turner**

WHEREAS, businesses in the City are currently placing tobacco products and related items in stores next to items intended for use or consumption by children;

WHEREAS, City Council deems it proper to amend the City Code by adding Section 5-2 to require businesses that sell tobacco products and related items to place such products behind a counter in a location that is not accessible to customers unless an employee of the business intervenes; and

WHEREAS, the State of Delaware Department of Homeland Security Division of Alcohol and Tobacco Enforcement expresses willingness to join the City in its efforts by helping the City identify businesses within the City that place tobacco products and related items within the reach or eyesight of children.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. Chapter 5 of the City Code is hereby amended by adding the underlined language to read as follows:

Sec. 5-3. – Businesses selling tobacco products.

(a) Definitions.

- (1) “Electronic smoking device” means a nonlighted, noncombustible device that employs a mechanical heating element, battery, or circuit, regardless of shape or size, to produce aerosolized or vaporized nicotine for inhalation into the body of an individual. “Electronic smoking device” includes a device that is manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, vape pen, or any other similar product with any other product name or descriptor.
 - (2) “Tobacco paraphernalia” means any item traditionally intended for use with tobacco products, including any pipe, paper, or accessory.
 - (3) “Tobacco product” means any product that contains tobacco, including, but not limited to, cigarettes, as defined in section 36-4(3), cigars, pipe tobacco, snuff or smokeless tobacco and is intended for human consumption or use.
- (b) *Prohibited Placement.* Except as otherwise specified in this section, no establishment that sells tobacco products, tobacco paraphernalia, or electronic smoking devices at retail may display, store, or place any such products, devices, or items, unless such item:
- (1) Is not immediately accessible to customers;
 - (2) Is accessible only to the owner or operator of the business or an agent of the owner or operator; and
 - (3) Is stored, displayed, placed, or offered for sale behind a checkout counter.
- (c) *Enforcement and penalties.*
- (1) Enforcement. In accordance with section 5-32(c), the commissioner of licenses and inspections in the exercise of the duties imposed upon him and acting through his deputies, shall examine establishments bound by the terms of this section to ascertain whether there is compliance with this section, and is authorized to issue and collect fines, and administer hearings pursuant to this section.
 - (2) Penalty. Any person or entity who violates this section is subject to a civil fine of not more than: two hundred fifty dollars (\$250) for the first violation; five hundred dollars (\$500) for the second violation; and one thousand dollars (\$1,000) for subsequent violations.
 - i. In addition to being subject to a civil fine pursuant to this Section, any person or entity who violates this section three or more times must also appear before the license and inspection review board for the board to determine whether to suspend or revoke that person’s or entity’s business license.

SECTION 2. This Substitute Ordinance shall become effective on July 15, 2019 upon its passage by City Council and approval by the Mayor.

First Reading..... December 13, 2018
 Second Reading..... December 13, 2018
 Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2019.

Mayor

SYNOPSIS: This Substitute Ordinance amends Chapter 5 of the City Code requiring businesses that sell tobacco products, electronic smoking devices, or tobacco paraphernalia to place such items behind a counter in an area that is not accessible to customers without the intervention of an employee of the business so as not to be placed within the reach of children. The State of Delaware Department of Homeland Security Division of Alcohol and Tobacco Enforcement has expressed an interest in helping the City to identify businesses that do not comply with this amended section of the City Code.

FISCAL IMPACT STATEMENT: This Substitute Ordinance has no anticipated fiscal impact.