

ORDINANCE NO. ____
DRAFT

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMHERST, OHIO, AMENDING THE CODIFIED ORDINANCES OF THE CITY OF AMHERST, BY ADDING A NEW CHAPTER TO PART 7 BUSINESS REGULATION CODE, CHAPTER 763 CREATING TOBACCO RETAIL ESTABLISHMENT LICENSING FOR THE SALE OF TOBACCO PRODUCTS IN THE CITY OF AMHERST; AND

AMENDING THE OFFENSES AGAINST PERSONS CODE, SECTION 537.16 ILLEGAL DISTRIBUTION OF CIGARETTES, OTHER TOBACCO PRODUCTS, OR ALTERNATIVE NICOTINE PRODUCTS; TRANSACTION SCANS, TO AMEND THE DEFINITION OF TOBACCO PRODUCTS

WHEREAS, tobacco kills over 480,000 people in the United States each year, 90% of smokers first try a tobacco product by age 18, and more than 95% of addicted smokers start before age 21; and

WHEREAS, the developing teenage brain is particularly vulnerable to the effects of nicotine, and about 350 youth become regular smokers each day in the United States; and

WHEREAS, 29.8% of high school seniors in Ohio have vaped in the past 30 days

WHEREAS, pursuant to the Constitution of the State of Ohio and the Ohio Revised Code, municipalities have the power of local self-government; and

WHEREAS, Lorain County Public Health desires to ensure proper training and enforcement of the restrictions on the sales of tobacco and nicotine-containing products to those under the age of 21; and

WHEREAS, the density of tobacco retailers, particularly in neighborhoods surrounding schools, has been associated with increased youth smoking rates; and

WHEREAS, the Cities of Lorain, Kent, Hamilton, Cincinnati, Columbus and other local communities have established similar licensing programs for the sale of tobacco and related products;

Now, **THEREFORE**, Be it Ordained by the Council of the City of Amherst:

SECTION 1. That Part 7 of the Codified Ordinances of the City of Amherst is hereby amended to include Chapter 763, entitled “*Tobacco Retailer Establishments*” which reads as follows:

Chapter 763

Tobacco Retailer Establishments

763.01. Definitions.

As used in this chapter:

(a) "Tobacco Retailer License" means a license issued by Lorain County Public Health for the sale of tobacco products. "Tobacco retailer license" and "license" are used interchangeably in this Ordinance and shall have the same meaning.

(b) "Licensee" means the holder of a valid license for the sale of tobacco products.

(c) "Person" means any natural person.

(d) "Public place" means any area to which the public is invited or in which the public is permitted, including, but not limited to, any right of way, mall or shopping center, park, playground and any other property owned by the City, and any school district or any park district.

(e) "Tobacco Retailer" means any person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation who owns, operates, or manages any tobacco retail establishment. Tobacco retailer does not mean the non-management employees of any tobacco retail establishment.

(f) "Tobacco Retail Establishment" means any place of business where tobacco products are available for sale, whether or not the business is open to the general public, whether the business is a "movable place of business" defined under this section, or a business or entity that maintains a private membership-based point of sale. The term includes but is not limited to grocery stores, tobacco product shops, kiosks, convenience stores, gasoline service stations, bars, country clubs, cigar lounges, and restaurants.

(g) "Self-service displays" means any display from which customers may select a tobacco product without assistance from the tobacco retailer or the tobacco retailer's agent or employee and without direct person-to-person transfer between the purchaser and the tobacco retailer or tobacco retailer's agent or employee. A tobacco vending machine is a form of self-service display.

(h) "Tobacco product" means

(1) Any product containing, made of, or derived from tobacco or nicotine, regardless of source, that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, hookah, electronic hookah, snuff, shisha, or snus;

(2) Any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine, including but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah; or

(3) Any component, part, or accessory, instrument, or paraphernalia of (1) or (2), whether or not any of these contain tobacco or nicotine or whether or not sold separately, including but not limited to, a mechanical heating element, battery, electronic circuit, liquids used in electronic smoking devices, filters, rolling papers, blunt or hemp wraps, hookahs, and pipes.

(4) Tobacco product does not include any product that is a drug, device, or combination of products specifically authorized for smoking cessation purposes by the United States Food and Drug Administration, as those terms are defined or described in 21 U.S.C. 321 and 353(g).

(i) "Vending machine" includes any mechanical or electronic device designed to do both of the following:

- (1) Receive a coin or bill, or token made for that purpose;
- (2) In return for the insertion or deposit of a coin, bill or token, automatically dispenses any tobacco products.

(j) "Sale" includes delivery, barter, exchange, transfer or gift, or offer thereof, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee.

(k) "Possess" or "Possession" means having control over a thing or substance, but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found.

(l) "Moveable Place of Business" means any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and that is not a fixed address or other permanent type of structure licensed for over-the counter sales transactions.

(m) "Licensed Product" means the term that collectively refers to any tobacco product.

(n) "Arm's Length Transaction" means a sale in good faith and for valuable consideration that reflects the fair market value between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an Arm's Length Transaction.

(o) "Compliance Check" means the system Lorain County Public Health uses to investigate and ensure that those authorized to sell tobacco products are following and complying with the requirements of this ordinance. Compliance checks can involve the use of persons under the age of 21 who purchase or attempt to purchase tobacco products. Compliance checks may also be conducted by Lorain County Public Health, the City of Amherst, other units of government, or designated agencies for educational, research, and/or training purposes, or for investigating or enforcing federal, state, or local laws and regulations relating to tobacco products.

(p) "Delivery Sale" means the sale of any tobacco product to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the counter sales transaction in a licensed retail establishment. Delivery sale includes, but is not limited to, the sale of any tobacco product when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. Delivery sale includes delivery by licensees or third parties by any means, including curbside pick-up.

763.02 License Required; Application.

(a) License required. No person, tobacco retailer, or tobacco retail establishment shall sell or offer to sell any tobacco product, whether by arm's length transactions or through vending machine sales, without first having obtained a license from Lorain County Public Health, the Lorain County Health Commissioner, or an authorized designee of Lorain County Public Health.

(b) Application. An application for a license to sell tobacco products must be made on a form provided by Lorain County Public Health. The application must contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information Lorain County Public Health deems necessary. If Lorain County Public Health, the Lorain County Health Commissioner, or a specified designee determines that an application is incomplete, the application will be returned to the applicant with notice of the deficiency and the requisite information necessary to make the application complete.

(c) Term. The license term is one calendar year, beginning on September 1 and ending August 31 of the year following year. In cases of applications for a new license submitted after September 1 of and more than 60 days before the following August 31, the Health Commissioner or the designee may issue a license for the remainder of the standard term period, but such license term will only extend to the last day of August 31st date of the licensing year. The license fee shall be prorated at an amount of the total annual fee divided by 12 months at that cost per month for the remaining months of the licensing year at the time of application.

(d) Violation, suspension, or revocation.

Any license issued may be suspended or revoked following the procedures set forth in this Chapter.

A tobacco retailer or retail establishment that violates any provision of this ordinance, or any other federal, state, or local law relating to tobacco product sales, shall be subject to the penalties prescribed in this Chapter and pursuant to Section 537.16 of the Amherst Code of Ordinances pertaining to the illegal distribution and sale of tobacco products. These penalties include civil fines and/or the prohibition of the sale of tobacco products.

A violation of other federal, state, and/or local laws relating to tobacco product sales shall be included in the determination and accrual of violations against a tobacco retail establishment's license as proscribed in this Chapter.

(e) Transfers. All tobacco retail licenses issued are valid only on the premises for which the tobacco retail license was issued and only for the person to whom the license was issued. Licensees may not assign or transfer the license granted to it, directly, or indirectly, whether voluntarily or involuntarily or by operation of law without the written consent of the Safety/Service Director of the City of Amherst, which shall not be unreasonably conditioned, delayed or withheld and upon confirmation that the Assignee does not meet any of the criteria of Section 763.03 (a). Notice of the licensee's request transfer shall also be sent in writing to the Lorain County Public Health, or another designee, at the time the requested transfer is made to the City of Amherst Safety/Service Director.

(f) Display. All tobacco retail licenses must be posted and displayed at all times in plain view of the general public or clientele of the tobacco retail establishment.

(g) Renewals. The renewal of a license issued under this ordinance shall be handled in the same manner as the original application. The request for a renewal must be made at least 30 days, but no more than 60 days, before the expiration of the current license on the last day of August.

(h) Issuance as a privilege and not a right. The issuance of a license is a privilege and does not entitle the license holder to an automatic renewal of the license.

(i) Instructional program. Licensees must complete and ensure that all employees complete a training program on the legal requirements related to the sale of tobacco products and the possible consequences of license violations. Any training program must be pre-approved by Lorain County Public Health, the Lorain County Health Commissioner or its designee; shall include information that the sale of tobacco products to persons under 21 years of age is illegal; the types of identification legally acceptable for proof of age; and that sales to persons under 21 years of age shall subject the tobacco retailer and/or retail establishment to penalties. Licensees must maintain documentation demonstrating their compliance and must provide this documentation to Lorain County Public Health at the time of renewal, or whenever requested to do so during the license term.

763.03 Basis for Denial of License.

(a) Grounds for denying the issuance or renewal of a tobacco retail license include, but are not limited to, the following:

- (1) the applicant is under 21 years of age;

(2) the applicant has been convicted within the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to the sale of tobacco products;

(3) the applicant has had a tobacco retail license revoked due to violations of this ordinance within the preceding eighteen (18) months of the date of application;

(4) the applicant fails to provide the information required on the licensing application or provides false or misleading information;

(5) the applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a tobacco retail license;

(6) the applicant is in arrears with respect to any fine imposed for violation of this ordinance;

(7) The business for which the tobacco retailer license is requested is a moveable place of business. Only fixed-location retail establishments are eligible to be licensed.

(b) If a license is mistakenly issued or renewed to an applicant, Lorain County Public Health, Lorain County Health Commissioner, or its designee may revoke the license upon the discovery that the applicant was ineligible for the license under this ordinance. Lorain County Public Health, the Lorain County Health Commissioner, or its designee, will provide the tobacco retailer license holder with notice of the revocation, along with information on the right to appeal.

(c) If a tobacco retail license is suspended or revoked, whether due to applicant or licensee ineligibility, or determination of a violation under this ordinance, or any other federal, state, or local law or regulation, the license fee is forfeited to Lorain County Public Health and shall not be refunded to the applicant or licensee.

763.04 License Fees and Fines.

(a) No tobacco retailer license shall be issued under this ordinance until the appropriate license fees are paid in full. No tobacco retailer license shall be renewed if the tobacco retailer or tobacco retail establishment has outstanding fines pursuant to this ordinance.

(b) The fee for a tobacco retailer license or renewal shall be \$450.00. Lorain County Public Health shall have the authority to adjust the fee to a lesser amount as deemed necessary, but at no time shall the fee exceed \$450.00 annually.

(c) Tobacco retailer license fees and civil fines collected under this Chapter shall be used to fund tobacco retail licensure compliance and enforcement measures, including, but not limited to, issuing licenses, administering the license program, tobacco retailer education, tobacco retailer inspection and compliance checks, documentation of violations, and prosecution of violators.

Such funds may also be designated for other tobacco control, prevention, and education programs as determined by Lorain County Public Health.

763.05 Prohibited Sales.

(a) In person and delivery sales. No tobacco retail establishment or person shall sell or offer to sell any tobacco product by means of delivery sales. All sales of tobacco products must be conducted in person, in a licensed tobacco retail establishment, in over-the-counter sales transactions.

(b) Vending machine sales. No tobacco retail establishment or person shall sell or offer to sell any tobacco product through vending machine or self-service displays without first acquiring a tobacco retail license pursuant to Section 763.02 of this Chapter and Section 537.16(a)(3) of the Amherst Code of Ordinances governing vending machine sales.

(c) Legal age. No tobacco retailer, tobacco retail establishment, or person shall sell any tobacco product to any person under the age of 21 under this Chapter and under Section 537.16 of the Amherst Code of Ordinances.

(e) Signage. Notice of the legal sales age for the purchase of tobacco products, age verification requirements, and possible penalties for underage sales must be posted within 6 feet of each cash register or place where payment may be made in a place conspicuous to both employees and customers, and where the sign(s) are unobstructed in their entirety. The sign shall state, "THE SALE OR PROVISION OF TOBACCO PRODUCTS, INCLUDING E-CIGARETTES, TO AN INDIVIDUAL UNDER 21 YEARS OF AGE IS PROHIBITED BY LAW." The sign required shall be 5 ½ inches by 8 ½ inches and the statement required shall be printed in 36-point boldfaced type. The required signage will be provided to the licensee by Lorain County Public Health or another designee.

(f) Samples prohibited. No tobacco retailer, tobacco retail establishment, or person shall gift or distribute samples of any tobacco product free of charge or at a nominal cost, regardless of the age of the person acquiring the product. The distribution of a tobacco product as a sample, free donation, gift, or at otherwise nominal cost, is prohibited and shall subject the tobacco retailer or tobacco retail establishment to the penalties prescribed under this Chapter and those prescribed by other local, state or federal laws pertaining to samples, donation, or otherwise nominally priced tobacco products.

(g) No tobacco retailer, tobacco retail establishment, or person shall sell or offer to sell any tobacco product in any manner or form prohibited by federal, state, or other local law, ordinance provision, or other regulation.

(h) Any person, tobacco retailer or tobacco retail establishment found to be selling a tobacco product without a license required under Section 763.02 shall be issued a No Sales Order for

Tobacco Products and shall be ineligible to receive a tobacco retailer license for a period of three (3) years.

763.06 Compliance Checks and Inspections.

(a) All licensed premises must be open to inspection by Lorain County Public Health or its authorized designees during regular business hours. The tobacco retail establishment shall be subject to unannounced compliance checks by Lorain County Public Health or its authorized designees.

(b) Compliance checks must include verification that a tobacco retail establishment maintains a current tobacco retailer license to sell tobacco products.

(c) Compliance checks may include the participation of a person at least 18 years of age, but under the age of 21, to enter the licensed premises to attempt to purchase tobacco products.

(c) Unannounced follow-up compliance checks of all non-compliant tobacco retail establishments are required within three months of any violation of this ordinance. The results of all compliance checks shall be published annually and made available to the public as determined by Lorain County Public Health.

763.07 Exceptions and Defenses.

It is an affirmative defense to a violation of this ordinance for a person to have reasonably relied on proof of age and conducted age verification requirements described under this Chapter, under Section 537.16 of the Amherst Code of Ordinances, and by state law.

763.08 Violations and Administrative Penalties.

(a) First Violation: Any person, tobacco retailer or tobacco retail establishment holding a tobacco retailer license and cited for violating Chapter 763, or whose employee has violated Chapter 763, may be charged a fine of up to \$300 for a first violation.

(b) A second violation at the same tobacco retail establishment premises within a 36-month period may result in a fine of up to \$600, and Lorain County Public Health or appropriate designee may suspend the tobacco retailer license for a period of not less than 30 and not more than 60 consecutive days.

(c) A third violation at the same tobacco retail establishment premises within a 36-month period may result in a fine of up to \$1,000, and the Lorain County Health Commissioner or its designee may suspend the tobacco retail establishment's license for a period of not less than 60 consecutive days. In addition to the designated fine, Lorain County Public Health or its designee may revoke the tobacco retail establishment's license.

(d) A fourth violation at the same tobacco retail establishment premises within a 36-month period may result in a fine of up to \$1,200 and the tobacco retail establishment's license may be revoked.

(e) A tobacco retailer, or agent, employee or representative of a tobacco retailer that violates age verification or transaction scan requirements proscribed under Section 537.16 of the Amherst Code of Ordinances is subject to the penalties described under that section.

763.09 Appeals. If Lorain County Public Health or authorized designee denies the issuance of a tobacco retailer license, or suspends or revokes a tobacco retailer license, or issues a citation for violating this Chapter, Lorain County Public Health or authorized designee shall send the applicant or licensee written notice of the action and notice of the right to an appeal. Such notice shall be sent by Certified Mail with return receipt requested.

Upon receipt of written notice of any citation or fines accrued under this Chapter, or the denial, suspension, or revocation of the license, the licensee shall have the right to appeal to Lorain County Public Health. An appeal must be appropriately filed within thirty (30) days after the receipt of notice of the determination of a violation or change of license status due to suspension or revocation. The appellant shall bear the burden of proof.

763.10 Severability. If any section or provision of this ordinance is held invalid, such invalidity will not affect other sections or provisions that can be given full force and effect without the invalidated section or provision.

SECTION 2. That Part 5, Chapter 537 Offenses Against Persons, Section 537.16 Illegal Distribution of Cigarettes, Other Tobacco Products, or Alternate Nicotine Products; Transaction Scans of the Code of Ordinances of the City of Amherst, is hereby amended as follows:

537.16 ILLEGAL DISTRIBUTION OF CIGARETTES, OTHER TOBACCO PRODUCTS, TRANSACTION SCANS.

(a) Illegal Distribution of Tobacco Products,

(1) As used in this section:

A. "Age verification." A service provided by an independent third party (other than a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes) that compares information available from a commercially available database, or aggregate of databases, that regularly are used by government and businesses for the purpose of age and identity verification to personal information provided during an internet sale or other remote method of sale to establish that the purchaser is twenty-one years of age or older.

B. "Alternative nicotine product."

1. Subject to subsection (a)(1)B.2. of this section, an electronic smoking device, vapor product, or any other product or device that consists of or contains nicotine that can be ingested into the body by any means, including, but not limited to, chewing, smoking, absorbing, dissolving, or inhaling.

2. The phrase does not include any of the following:
- a. Any cigarette or other tobacco product;
 - b. Any product that is a “drug” as that term is defined in 21 U.S.C. 321(g)(1);
 - c. Any product that is a “device” as that term is defined in 21 U.S.C. 321(h);
 - d. Any product that is a “combination product” as described in 21 U.S.C. 353(g).

C. “Cigarette.” Includes clove cigarettes and hand-rolled cigarettes.

D. “Distribute.” Means to furnish, give, or provide cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to the ultimate consumer of the cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes.

E. “Electronic smoking device.” Means any device that can be used to deliver any aerosolized or vaporized nicotine or any other substance, whether or not the substance contains nicotine to the person inhaling from the device including an electronic cigarette, electronic cigar, electronic hookah, vaping pen, or electronic pipe. The phrase 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. The phrase does not include any product that is a drug, device, or combination product, as those terms are defined or described in 21 U.S.C. 321 and 353(g).

F. “Proof of age.” Means a driver’s license, a commercial driver’s license, a military identification card, a passport, or an identification card issued under Ohio R.C. 4507.50 to 4507.52 that shows that a person is twenty-one years of age or older.

G. “Tobacco product” means

(1) Any product containing, made of, or derived from tobacco or nicotine, regardless of source, that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, hookah, electronic hookah, snuff, shisha, or snus;

(2) Any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine, including but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah; or

(3) Any component, part, or accessory, instrument, or paraphernalia of (1) or (2), whether or not any of these contain tobacco or nicotine or whether or not sold separately, including but not limited to, a mechanical heating element, battery, electronic circuit, liquids used in electronic smoking devices, filters, rolling papers, blunt or hemp wraps, hookahs, and pipes.

(4) Tobacco product does not include any product that is a drug, device, or combination of products specifically authorized for smoking cessation purposes by the United States Food and Drug Administration, as those terms are defined or described in 21 U.S.C. 321 and 353(g).

H. "Vapor product." Means a product, other than a cigarette or other tobacco product as defined in Ohio R.C. Chapter 5743, that contains or is made or derived from nicotine and that is intended and marketed for human consumption, including by smoking, inhaling, snorting, or sniffing. The phrase includes any component, part, or additive that is intended for use in an electronic smoking device, a mechanical heating element, battery, or electronic circuit and is used to deliver the product. The phrase does not include any product that is a drug, device, or combination product, as those terms are defined or described in 21 U.S.C. 321 and 353(g). The phrase includes any product containing nicotine, regardless of concentration.

I. "Vending machine." Has the same meaning as "coin machine" in Ohio R.C. 2913.01.

(2) No manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes, no agent, employee, or representative of a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes, and no other person shall do any of the following:

A. Give, sell, or otherwise distribute cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to any person under twenty-one years of age;

B. Give away, sell, or distribute cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes in any place that does not have a tobacco retail license pursuant to this Chapter and to Chapter 763 governing licensing of tobacco retail establishments. and the requisite posted in a conspicuous place a legibly printed signage stating in letters at least one-half inch high stating that giving, selling, or otherwise distributing cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to a person under twenty-one years of age is prohibited by law "THE SALE OR PROVISION OF TOBACCO PRODUCTS, INCLUDING E-CIGARETTES, TO AN INDIVIDUAL UNDER 21 YEARS OF AGE IS PROHIBITED BY LAW" with additional requirements pursuant to CH 763.05(e).

C. Knowingly furnish any false information regarding the name, age, or other identification of any person under twenty-one years of age with purpose to obtain cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes for that person;

D. Manufacture, sell, or distribute in this state any pack or other container of cigarettes containing fewer than twenty cigarettes or any package of roll-your-own tobacco containing less than six-tenths of one ounce of tobacco;

E. Sell cigarettes or alternative nicotine tobacco products in a smaller quantity than that placed in the pack or other container by the manufacturer;

F. Give, sell, or otherwise distribute alternative nicotine products, papers used to roll cigarettes, or tobacco products other than cigarettes over the internet or through another remote method without age verification pursuant to this Chapter and to Chapter 763.05(c)-(d).

(3) No tobacco retailer or person shall sell or offer to sell cigarettes, other tobacco products, or alternative nicotine products by or from a vending machine without a valid tobacco retail license pursuant to Chapter 763 of the Amherst Code of Ordinances. Vending machines dispensing tobacco products shall only operate except in the following locations:

- A. An area within a factory, business, office, or other place not open to the general public;
- B. An area to which persons under twenty-one years of age are not generally permitted access;
- C. Any other place not identified in subsection (a)(3)A. or B. of this section, upon all of the following conditions:

1. The vending machine is located within the immediate vicinity, plain view, and control of the person, agent or employee of the licensed tobacco retailer who owns or operates the place, or an employee of that person, so that all cigarettes, other tobacco product, and alternative nicotine product purchases from the vending machine will be readily observed by the person who owns or operates the place or an employee of that person agent or employee. For the purpose of this section, a vending machine located in any unmonitored area, including an unmonitored coatroom, restroom, hallway, or outer waiting area, shall not be considered located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of that person.

2. The vending machine is inaccessible to the public when the place is closed.

3. A clearly visible notice is posted in the area where the vending machine is located with signage requirements in accordance with Section 537.16(a)(2)(B) of this Chapter and Section 763.05(e) of Chapter 763 governing tobacco retail establishment requirements that states the following in letters that are legibly printed and at least one-half inch high: "It is illegal for any person under the age of twenty-one to purchase tobacco or alternative nicotine products.

(4) The following are affirmative defenses to a charge under subsection (a)(2)A. of this section:

A. The person under twenty-one years of age was accompanied by a parent, or spouse who is twenty-one years of age or older, or legal guardian of the person under twenty-one years of age.

B. The person who gave, sold, or distributed cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to a person under twenty-one years of age under subsection (a)(2)A. of this section is a parent, **or** spouse who is twenty-one years of age or older, or legal guardian of the person under twenty-one years of age.

(5) It is not a violation of subsection (a)(2)A. or B. of this section for a person to give or otherwise distribute to a person under twenty-one years of age cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes while the person under twenty-one years of age is participating in a research protocol if all of the following apply:

A. The parent, guardian, or legal custodian of the person under twenty-one years of age has consented in writing to the person under twenty-one years of age participating in the research protocol.

B. An institutional human subjects protection review board, or an equivalent entity, has approved the research protocol.

C. The person under twenty-one years of age is participating in the research protocol at the facility or location specified in the research protocol.

(6) A. Whoever violates subsection (a)(2)A., B., D., E., or F. or (a)(3) of this section is guilty of illegal distribution of cigarettes, other tobacco products and are subject to the civil penalties as prescribed by Chapter 763 pertaining to tobacco retailer license requirements., or alternative nicotine products. Except as otherwise provided in this division, illegal distribution of cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of subsection (a)(2)A., B., D., E., or F. or (a)(3) of this section or a substantially equivalent state law or municipal ordinance, illegal distribution of cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the third degree.

B. Whoever violates subsection (a)(2)C. of this section is guilty of permitting a person under twenty-one years of age to use cigarettes, other tobacco products, or alternative nicotine products. Except as otherwise provided in this division, permitting a person under twenty-one years of age to use cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of subsection (a)(2)C. of this section or a substantially equivalent state law or municipal ordinance, permitting a person under twenty-one years of age to use cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the third degree.

(7) Any cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes that are given, sold, or otherwise distributed to a person under twenty-one years of age in violation of this section and that are used, possessed, purchased, or received by a person under twenty-one years of age in violation of Ohio R.C. 2151.87 are subject to seizure and forfeiture as contraband under Ohio R.C. Chapter 2981.

(ORC 2927.02)

(b) Transaction Scan.

(1) For the purpose of this subsection (b) and subsection (c) of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

A. "Card holder." Any person who presents a driver's or commercial driver's license or an identification card to a licensed tobacco retailer, seller, or an agent or employee of a seller, to purchase or receive cigarettes, other tobacco products, or alternative nicotine products from a licensed tobacco retailer, seller, agent or employee.

B. "Identification card." An identification card issued under Ohio R.C. 4507.50 to 4507.52.

C. "Seller." A seller of cigarettes, other tobacco products, or alternative nicotine products and includes any person, tobacco retailer or tobacco retail establishment defined under Chapter 763 of the Code of Ordinances person whose sale, gift of or other distribution of cigarettes, other tobacco products, or alternative nicotine products is subject to the prohibitions of subsection (a) of this section.

D. "Transaction scan." The process by which a tobacco retailer, seller or an agent or employee of a seller checks, by means of a transaction scan device, the validity of a driver's or commercial driver's license or an identification card that is presented as a condition for purchasing or receiving cigarettes, other tobacco products, or alternative nicotine products.

E. "Transaction scan device." Any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver's or commercial driver's license or an identification card.

(2) A. A tobacco retailer, seller or an agent or employee of a seller may perform a transaction scan by means of a transaction scan device to check the validity of a driver's or commercial driver's license or identification card presented by a card holder as a condition for selling, giving away or otherwise distributing to the card holder cigarettes, other tobacco products, or alternative nicotine products.

B. If the information deciphered by the transaction scan performed under subsection (b)(2)A. of this section fails to match the information printed on the driver's or commercial driver's license or identification card presented by the card holder, or if the transaction scan indicates that the information so printed is false or fraudulent, neither the seller nor any agent or employee of the seller shall sell, give away or otherwise distribute any cigarettes, other tobacco products, or alternative nicotine products to the card holder.

C. Subsection (b)(2)A. of this section does not preclude a seller or an agent or employee of a seller from using a transaction scan device to check the validity of a document other than a driver's or commercial driver's license or identification card, if the document includes a bar code or magnetic strip that may be scanned by the device, as a condition for selling, giving away or otherwise distributing cigarettes, other tobacco products, or alternative nicotine products to the person presenting the document.

(3) Rules adopted by the Registrar of Motor Vehicles under Ohio R.C. 4301.61(C) apply to the use of transaction scan devices for purposes of this subsection (b) and subsection (c) of this section.

(4) A. No seller or agent or employee of a seller shall electronically or mechanically record or maintain any information derived from a transaction scan, except for the following:

1. The name and date of birth of the person listed on the driver's or commercial driver's license or identification card presented by the card holder;

2. The expiration date and identification number of the driver's or commercial driver's license or identification card presented by the card holder.

B. No seller or agent or employee of a seller shall use the information that is derived from a transaction scan or that is permitted to be recorded and maintained under subsection (b)(4)A. of this section, except for purposes of subsection (c) of this section.

C. No seller or agent or employee of a seller shall use a transaction scan device for a purpose other than the purpose specified in subsection (c)(2)A. of this section.

D. No seller or agent or employee of a seller shall sell or otherwise disseminate the information derived from a transaction scan to any third party, including but not limited to selling or otherwise disseminating that information for any marketing, advertising or promotional activities, but a seller or agent or employee of a seller may release that information pursuant to a court order or as specifically authorized by subsection (c) of this section or another section of these Codified Ordinances or the Ohio Revised Code.

(5) Nothing in this subsection (b) or subsection (c) of this section relieves a seller or an agent or employee of a seller of any responsibility to comply with any other applicable local, state or federal laws or rules governing the sale, giving away or other distribution of cigarettes, other tobacco products, or alternative nicotine products.

(6) Whoever violates subsection (b)(2)B. or (b)(4) of this section is guilty of engaging in an illegal tobacco product or alternative nicotine product transaction scan, and the court may impose upon the offender a civil penalty of up to one thousand dollars (\$1,000) for each violation. The Clerk of the Court shall pay each collected civil penalty to the County Treasurer for deposit into the County Treasury.

(ORC 2927.021)

(c) Affirmative Defenses.

(1) A seller or an agent or employee of a seller may not be found guilty of a charge of a violation of subsection (a) of this section in which the age of the purchaser or other recipient of cigarettes, other tobacco products, or alternative nicotine products is an element of the alleged violation, if the seller, agent or employee raises and proves as an affirmative defense that all of the following occurred:

A. A card holder attempting to purchase or receive cigarettes, other tobacco products, or alternative nicotine products presented a driver's or commercial driver's license or an identification card.

B. A transaction scan of the driver's or commercial driver's license or identification card that the card holder presented indicated that the license or card was valid.

C. The cigarettes, other tobacco products, or alternative nicotine products were sold, given away or otherwise distributed to the card holder in reasonable reliance upon the identification presented and the completed transaction scan.

(2) In determining whether a seller or an agent or employee of a seller has proven the affirmative defense provided by subsection (c)(1) of this section, the trier of fact in the action for the alleged violation of subsection (a) of this section shall consider any written policy that the seller has adopted and implemented and that is intended to prevent violations of subsection (a) of

this section. For purposes of subsection (c)(1)C. of this section, the trier of fact shall consider that reasonable reliance upon the identification presented and the completed transaction scan may require a seller or an agent or employee of a seller to exercise reasonable diligence to determine, and that the use of a transaction scan device does not excuse a seller or an agent or employee of a seller from exercising reasonable diligence to determine, the following:

A. Whether a person to whom the seller or agent or employee of a seller sells, gives away or otherwise distributes cigarettes, other tobacco products, or alternative nicotine products is twenty-one years of age or older;

B. Whether the description and picture appearing on the driver's or commercial driver's license or identification card presented by a card holder is that of the card holder.

(3) In any criminal action in which the affirmative defense provided by subsection (c)(1) of this section is raised, the Registrar of Motor Vehicles or a Deputy Registrar who issued an identification card under Ohio R.C. 4507.50 to 4507.52 shall be permitted to submit certified copies of the records of that issuance in lieu of the testimony of the personnel of or contractors with the Bureau of Motor Vehicles in the action.

(ORC 2927.022)

(d) Shipment of Tobacco Products.

(1) As used in this subsection (d):

A. "Authorized recipient of tobacco products" means a person who is:

1. Licensed as a cigarette wholesale dealer under Ohio R.C. 5743.15;
2. Licensed as a retail dealer as long as the person purchases tobacco products, including cigarettes, with the appropriate tax stamp affixed;
3. An export warehouse proprietor as defined in Section 5702 of the Internal Revenue Code;
4. An operator of a customs bonded warehouse under 19 U.S.C. 1311 or 19 U.S.C. 1555;
5. An officer, employee, or agent of the federal government or of this state acting in the person's official capacity;
6. A department, agency, instrumentality, or political subdivision of the federal government or of this state;
7. A person having a consent for consumer shipment issued by the Tax Commissioner under Ohio R.C. 5743.71.

B. "Motor carrier." Has the same meaning as in Ohio R.C. 4923.01.

(2) The purpose of this division (d) is to prevent the sale of cigarettes to minors and to ensure compliance with the Master Settlement Agreement, as defined in Ohio R.C. 1346.01.

(3) A. No tobacco retailer or person shall cause to be shipped any tobacco products, including cigarettes, to any person in this municipality other than an authorized recipient of tobacco products.

B. No motor carrier or other person shall knowingly transport tobacco products, including cigarettes, to any person in this municipality that the carrier or other person reasonably believes is not an authorized recipient of tobacco products. If tobacco products, including cigarettes, are transported to a home or residence, it shall be presumed that the motor carrier or other person knew that the person to whom the tobacco products, including cigarettes, were delivered was not an authorized recipient of tobacco products.

(4) No tobacco retailer or person engaged in the business of selling tobacco products, including cigarettes, who ships or causes to be shipped tobacco products, including cigarettes, to any person in this municipality in any container or wrapping other than the original container or wrapping of the tobacco products, including cigarettes, shall fail to plainly and visibly mark the exterior of the container or wrapping in which the tobacco products, including cigarettes, are shipped with the words “cigarettes:” or “tobacco products.”

(5) A court shall impose a fine of up to one thousand dollars (\$1,000) for each violation of subsection (d)(3)A., (d)(3)B., or (d)(4) of this section.

(ORC 2927.023)

(e) Furnishing False Information to Obtain Tobacco Products.

(1) No person who is eighteen years of age or older but younger than twenty-one years of age shall knowingly furnish false information concerning that person’s name, age, or other identification for the purpose of obtaining tobacco products.

(2) Whoever violates subsection (e)(1) of this section is guilty of furnishing false information to obtain tobacco products. Except as otherwise provided in this division, furnishing false information to obtain tobacco products is a misdemeanor of the fourth degree. If the offender previously has been convicted of or pleaded guilty to a violation of subsection (e)(1) of this section or a substantially equivalent state law or municipal ordinance, furnishing false information to obtain tobacco products is a misdemeanor of the third degree.

(ORC 2927.024)

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1.8.24 DRAFT. Has not been reviewed by Law Dept