

Ordinance No. 186-2025

By Council Members Conwell, Griffin,
Santana and Kazy
(by departmental request)

AN EMERGENCY ORDINANCE

To amend Sections 607.15 of the Codified Ordinances of Cleveland, Ohio, 1976, relating to the illegal distribution of cigarettes, other tobacco products or alternative nicotine products.

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That Section 607.15 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by Ordinance No. 737-15, passed December 7, 2015, is amended to read as follows:

Section 607.15 ~~Illegal Distribution of Cigarettes, and~~ Other Tobacco Products or Alternative Nicotine Products

(a) As used in this section:

(1) “Distribute” has the same meaning as defined in RC 2927.02.

(2) “Electronic smoking device” has the same meaning as defined in RC 2927.02.

(3) “Tobacco product” has the same meaning as defined in RC 2927.02 and includes vapor products as also defined in that section.

(4) “Vending machine” has the same meaning as “coin machine” in RC 2913.01.

~~(1) — A. — “Alternative nicotine product” means, subject to division (a)(1)B. of this section, an electronic cigarette 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.~~

~~B. — “Alternative nicotine product” does not include any of the following:~~

~~(i) — Any cigarette or other tobacco product;~~

~~(ii) — Any product that is a “drug” as that term is defined in 21 U.S.C. 321(g)(1);~~

~~(iii) — Any product that is a “device” as that term is defined in 21 U.S.C. 321(h).~~

~~(iv) — Any product that is a “combination product” as described in 21 U.S.C. 353(g).~~

~~(2) — “Child” has the same meaning as in RC 2151.011.~~

Ordinance No. 186-2025

(3) — "~~Cigarette~~" includes ~~clove cigarettes and hand-rolled cigarettes.~~

(4) — "~~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.~~

(5) — A. — "~~Electronic cigarette~~" means, subject to division (a)(5)B. of this section, any electronic product or device that produces a vapor that delivers nicotine or any other substance to the person inhaling from the device to simulate smoking and that is likely to be offered to or purchased by consumers as an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe.

B. — "~~Electronic cigarette~~" does not include any item, product, or device described in division (a)(1)B. of this section.

(6) — "~~Tobacco product~~" means any product that is made from tobacco, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, or snuff.

(7) — "~~Vending machine~~" has the same meaning as "~~coin machine~~" in RC 2913.01.

(8) — "~~Young adult~~" means a person who is ~~eighteen (18) years of age or older, but under twenty-one (21) years of age.~~

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

(1) ~~Give, sell or otherwise~~ Sell or distribute cigarettes; ~~or other tobacco products, alternative nicotine products, or papers used to roll cigarettes~~ (A) to any child person under the age of twenty-one (21); or (B) without first verifying proof of age;

(2) ~~Give, sell or otherwise distribute cigarettes, other~~ Sell or distribute cigarettes or other tobacco products, ~~alternative nicotine products, or papers used to roll cigarettes~~ to any individual who does not demonstrate, through a driver's license or other photographic identification card issued by a government entity or educational institution that the individual is at least ~~eighteen (18) twenty-one (21) years of age; unless the individual reasonably appears to be at least thirty (30) years of age, provided however, that such appearance shall not constitute a defense in any proceeding alleging the sale of cigarettes, tobacco products or electronic cigarettes to an individual under eighteen (18) years of age;~~

(3) — ~~Sell cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to any young adult;~~

Ordinance No. 186-2025

~~(4) — Sell cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to any individual who does not demonstrate, through a driver's license or other photographic identification card issued by a government entity or educational institution that the individual is at least twenty-one (21) years of age, unless the individual reasonably appears to be at least thirty (30) years of age, provided however, that such appearance shall not constitute a defense in any proceeding alleging the sale of cigarettes, tobacco products or electronic cigarettes to an individual under twenty-one (21) years of age;~~

~~(5) (3) Give away, sell~~ Sell or distribute cigarettes, ~~or other tobacco products, alternative nicotine products, or papers used to roll cigarettes~~ in any business that does not have posted in a conspicuous place a sign, in accordance with RC 2927.02 and any rules of the Department of Public Health stating that giving, selling or otherwise distributing cigarettes ~~or other tobacco products, alternative nicotine products or papers used to roll cigarettes~~ to a person under twenty-one (21) years of age is prohibited by law;

~~(6) (4) Knowingly furnish any false information regarding the name, age, or other identification of any person under twenty-one (21) years of age child or young adult with purpose to obtain cigarettes or other tobacco products, alternative nicotine products, or papers used to roll cigarettes for that child or young adult for that person under the age of twenty-one (21);~~

~~(7) (5) Manufacture, sell, or distribute in this City any pack or other container of cigarettes or alternative nicotine products containing fewer than twenty (20) cigarettes or any package of roll-your-own tobacco containing less than six-tenths (0.6) of one (1) ounce of tobacco;~~

~~(8) (6) Sell cigarettes or alternative nicotine~~ Sell or distribute cigarettes or other tobacco products in a smaller quantity than that placed in the pack or other container by the manufacturer;

~~(9) (7) Sell or distribute~~ other tobacco products in a smaller quantity than was intended for retail when the product was packaged by the manufacturer.;

~~(8) Sell or distribute tobacco products other than cigarettes over the internet or through remote method without age verification;~~

~~(9) Allow an employee under eighteen (18) years of age to sell any tobacco product; or~~

~~(10) Give away or otherwise distribute free samples of cigarettes or other tobacco products or coupons redeemable for cigarettes or other tobacco products: (A) to any person under twenty-one (21) years of age; (B) without first verifying proof of age; (C) in a manner prohibited under, or in accordance with Chapter 1333 or 1345 of the Revised Code; or (D) without first paying the taxes levied on such cigarettes or other tobacco products under, or in accordance with Chapter 5743 of the Revised Code.~~

Ordinance No. 186-2025

~~(e)~~ — No manufacturer, producer, distributor, wholesaler or retailer of cigarettes, other tobacco products, or papers used to roll cigarettes, and 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, shall give or otherwise distribute cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to any young adult.

~~(d)~~ (c) No person shall sell or offer to sell cigarettes or other tobacco products, ~~or alternative nicotine products~~ by or from a vending machine except in the following locations:

- (1) An area either:
 - A. Within a factory, business, office, or other place not open to the general public; or
 - B. To which persons under the age of twenty-one (21) years are not generally permitted access;

(2) In any other place not identified in division (c)(1) of this section, upon all of the following conditions:

- A. The vending machine is located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of such person, so that all cigarettes or other other tobacco product, and alternative nicotine product purchases products sold from the vending machine will be readily observed by the person who owns or operates the place or an employee of such person. 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 such person.
- B. The vending machine is inaccessible to the public when the place is closed.
- C. A clearly visible notice is posted in the area where the vending machine is located 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 21 to purchase tobacco products or alternative nicotine products”.

~~(e)~~ (d) The following are affirmative defenses to a charge under division (b)(1) of this section:

- (1) The parent, guardian, or legal custodian of ~~the child~~ a person under the age of twenty-one (21) has consented in writing to the child the person under the age of twenty-one (21) participating in the research protocol, or the young adult a person over the age of eighteen (18), but under the age of twenty-one (21),

Ordinance No. 186-2025

has consented in writing, on his or her own behalf, to participate in the research protocol.

(2) The person who gave, sold, or distributed cigarettes, ~~or other tobacco products, alternative nicotine products, or papers used to roll cigarettes to a child or young adult~~ to a person under twenty-one (21) years of age under division (b)(1) of this section is a parent, spouse who is twenty-one (21) years of age or older, or legal guardian of the child or young adult.

~~(f) (e)(1)~~ It is not a violation of division (b)(1) or (2) of this section for a person to give or otherwise sell or distribute to a child or young adult cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes while the child or young adult a person under the age of twenty-one (21) cigarettes or tobacco products while the person under the age of twenty-one (21) is participating in a research protocol if all of the following apply:

~~(1)A.~~ The parent, guardian, or legal custodian of the child the person under the age of twenty-one (21) has consented in writing to the child the person under the age of twenty-one (21) participating in the research protocol, or the young adult has consented in writing, on his or her own behalf, to participate in the research protocol.

~~(2)B.~~ An institutional human subjects protection review board, or equivalent entity, has approved the research protocol.

~~(3)C.~~ The child or young adult The person under the age of twenty-one (21) is participating in the research protocol at the facility or location specified in the research protocol.

(2) It is not a violation of division (b)(1) or (2) of this section for an employer to permit an employee eighteen (18), nineteen (19) or twenty (20) years of age to sell a tobacco product.

(f) (1) No delivery service shall accept from, transport or deliver to, or allow pick-up by, a person under twenty-one (21) years of age any tobacco products other than cigarettes.

(2) A delivery service shall require proof of age as a condition of accepting, transporting, delivering, or allowing pickup of the tobacco products other than cigarettes.

(g) (1) Whoever violates division (b)(1), (3), (5), ~~(6), or (7)~~, (8), (9) ~~or (10)~~ or divisions (c) or ~~(d)(f)~~ is guilty of illegal distribution of cigarettes, ~~other or~~ tobacco products, ~~or alternative nicotine products~~. Except as otherwise provided in this division, illegal distribution of cigarettes, ~~other or~~ other tobacco products, ~~or alternative nicotine products~~ is a misdemeanor of the fourth degree. If the offender has previously been convicted of ~~violation of division (b)(1), (3), (5), (7), (8), or (9) or divisions (e) or (d) of this section or divisions (B)(1), (2), (4), or (5) or (C) of RC2927.02 illegal distribution of cigarettes or other tobacco products,~~ then illegal distribution of cigarettes, ~~other or~~ other tobacco products, ~~or alternative nicotine products~~ is a misdemeanor of the third degree.

Ordinance No. 186-2025

(2) Whoever violates division ~~(b)(6)~~ (b)(4) of this section is guilty of permitting ~~children or young adults~~ a person under twenty-one (21) years of age to use cigarettes, ~~other tobacco products, or alternative nicotine products or tobacco products~~. Except as otherwise provided in this division, permitting ~~children or young adults~~ a person under twenty-one (21) years of age to use cigarettes, ~~other or~~ or tobacco products, ~~or alternative nicotine products~~ is a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of division ~~(4)~~ (b)(4) of this section or division (B)(3) of RC 2927.02, permitting ~~children or young adults~~ a person under twenty-one (21) years of age to use cigarettes, ~~other or~~ or other tobacco products, ~~or alternative nicotine products~~ is a misdemeanor of the third degree.

(h) Any cigarettes, ~~or other tobacco products, alternative nicotine products, or papers used to roll cigarettes~~ that are given, ~~or sold or distributed~~ to a ~~child or young adult~~ a person under twenty-one (21) years of age in violation of this section and that are used, possessed, purchased, or received by a ~~child~~ person under twenty-one (21) years of age in violation of RC 2151.87 are subject to seizure and forfeiture as contraband under RC Chapter 2981.

Section 2. That existing Section 607.15 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by Ordinance No. 737-15, passed December 7, 2015, is repealed.

Section 3. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

SM/KR:uo
2-10-2025
FOR: Director Margolius and Council Members Conwell, Griffin, Santana and Kazy

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(by departmental request)

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READ FIRST TIME on FEBRUARY 10, 2025 **REPORTS**
and referred to **DIRECTORS** of Public Health, Finance, Law;
COMMITTEES on Health Human Services and the Arts,
Finance Diversity Equity and Inclusion

CITY CLERK

READ SECOND TIME

CITY CLERK

READ THIRD TIME

PRESIDENT

CITY CLERK

APPROVED

MAYOR

REPORT
after second Reading

PASSAGE RECOMMENDED BY
COMMITTEE ON
HEALTH, HUMAN SERVICES
and the ARTS

FILED WITH COMMITTEE

PASSAGE RECOMMENDED BY
COMMITTEE ON
FINANCE, DIVERSITY, EQUITY
and INCLUSION

FILED WITH COMMITTEE