

Ordinance No. 187-2025

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

AN EMERGENCY ORDINANCE

To supplement the Codified Ordinances of Cleveland, Ohio, 1976, by enacting new Sections 235A.01 through 235A.11 and 235A.99, relating to tobacco retail licensing.

WHEREAS, it is estimated that 95% of all adult smokers began smoking before age twenty-one (21); and

WHEREAS, an earlier age of initiation is associated with greater levels of nicotine dependence and greater intensity and persistence of smoking beyond adolescence and through adulthood; and

WHEREAS, the parts of the brain most responsible for decision making, impulse control, sensation seeking, and susceptibility to peer pressure continue to develop and change through young adulthood, and adolescent brains are uniquely vulnerable to the effects of nicotine and nicotine addiction; and

WHEREAS, data from the 2024 National Youth Tobacco Survey on the use of e-cigarette products show that 5.9% of, or 1.63 million, U.S. middle and high school students reported current e-cigarette use, where 38.4% used e-cigarettes on a frequent basis and 87.6% of e-cigarette users reported using flavored products; and

WHEREAS, in 2019, 7.8% of Cleveland high school students reported smoking e-cigarettes; and

WHEREAS, as acknowledged by the Tobacco Free Ohio Alliance, the City also acknowledges racism as a force in determining how these social determinants are distributed, which have an undeniable effect on tobacco use and other factors that influence health at the individual and population level; and

WHEREAS, African American communities suffer health disparities disproportionately from the cigarette industry’s aggressive multi-decade targeting saturation of urban communities with the health, social, cultural, and environmental ill-effects of nicotine products; and

WHEREAS, a local licensing system for tobacco retailers to help combat the sale of tobacco products to those underage is necessary to protect the public health, safety, and welfare of our residents. A licensing system allows for local enforcement of tobacco-

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related laws. Licensing laws, when actively enforced, have been effective in reducing the number of illegal tobacco sales to underage persons; and

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 the Codified Ordinances of Cleveland, Ohio, 1976, are supplemented by enacting new Sections 235A.01 through 235A.11 and 235A.99 to read as follows:

CHAPTER 235A
TOBACCO PRODUCT SALES LICENSING

Section 235A.01 Definitions

For the purpose of this chapter, the following definitions shall apply:

- (a) “*Authorized Agent*” means an entity with which the Director has contracted for the community outreach and education provisions contained in this chapter.
- (b) “*City*” means the City of Cleveland, Ohio.
- (c) “*Department*” means the Department of Public Health of the City or its Authorized Agent.
- (d) “*Director*” means the Director of the Department of Public Health or its Authorized Agent.
- (e) “*Distribute*” means giving, providing, or delivering Tobacco Products as defined in this section.
- (f) “*Electronic Smoking Device*” has the same meaning as defined in RC 2927.02.
- (g) “*Purchaser*” means any person who obtains or attempts to obtain a Tobacco Product.
- (h) “*Sale*” or “*sell*” means transferring, or offering or attempting to transfer, Tobacco Product, as defined in the section, for money, trade, barter, exchange, or other consideration.
- (i) “*Self-Service Display*” means the open display or storage of Tobacco Products in a manner that is physically accessible in any way to the general public without the assistance of the Tobacco Retailer, as defined in this section, or its agent, employee, or representative and a direct person-to-person transfer between the purchaser and the Tobacco Retailer or its agent, employee, or representative.

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(j) “*Tobacco Product(s)*” has the same meaning as defined in RC 2927.02 and includes vapor product(s) as also defined in that section.

(k) “*Tobacco Retailer*” means any individual, firm, partnership, joint venture, association, joint stock company, corporation, unincorporated business entity, or any other group acting as a unit that owns a business where Tobacco Products are available for sale to the general public. Tobacco Retailer does not mean the employees or agents of an owner of a business where Tobacco Products are available for sale to the general public.

Section 235A.02 Tobacco Retail Sales License Required

(a) Each Tobacco Retailer engaging in the sale of Tobacco Products shall secure a tobacco retail sales license from the Commissioner of Assessments and Licenses for each location where it sells Tobacco Products in the City before engaging or continuing to engage in such business. An application for a tobacco retail sales license shall be made to the Commissioner of Assessments and Licenses and shall contain the full name of the applicant, the applicant’s business and personal address and telephone number, the name of the business for which the tobacco retail sales license is sought, a copy of the applicant’s valid vendor’s license from the Ohio Department of Taxation, if applicable, the signed form described in division (f) below, and any additional information the Commissioner of Environmental Health or the Director deems necessary, such as a certificate of occupancy issued by the City.

The Commissioner of Assessments and Licenses shall transmit the application to the Director for review, investigation, and a determination of compliance after which the Director shall return the application to the Commissioner with a recommendation for approval or disapproval. If the application is recommended for approval, the Commissioner shall issue a tobacco retail sales license. If the application is recommended for disapproval, a notice of denial shall be given to the applicant with the reasons for denial and the right to appeal under Section 201.03 of these Codified Ordinances.

(b) An application for a tobacco retail sales license may also be denied for the reasons set forth in division (c) of Section 235A.07.

(c) No Tobacco Retailer shall sell or distribute Tobacco Products without a valid tobacco retail sales license.

(d) A tobacco retail sales license may be renewed annually upon application made prior to the expiration of the previous license and shall remain valid for a period beginning with the date of issuance of the tobacco retail sales license and ending on the thirty-first day of December following the date of the issuance of the tobacco retail sales license unless sooner revoked under this chapter, unless the Tobacco Retailer has outstanding fines imposed under this chapter, or unless the Tobacco Retailer to whom it was issued discontinues business, in either of which case the holder of the tobacco retail sales license shall immediately return it to the Commissioner of Assessments and Licenses. A tobacco retail sales license shall not be transferred from one Tobacco Retailer to another or from one location to another.

(e) The Tobacco Retailer shall conspicuously display the tobacco retail sales license at all times and shall provide it to any person upon request. In the event of

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mutilation or destruction of the tobacco retail sales license, a duplicate copy, marked as such, shall be issued by the Commissioner of Assessments and Licenses upon application accompanied by a fee set by the City’s Board of Control and updated from time-to-time as necessary.

(f) No tobacco retail sales license shall be issued or renewed to a Tobacco Retailer unless the Tobacco Retailer provides a signed form stating that the Tobacco Retailer has read this chapter and has provided training to all employees regarding the sale of Tobacco Products and restrictions thereto. Such training shall inform employees that the sale of Tobacco Products to persons under twenty-one (21) years of age is illegal, identify the types of identification legally acceptable for proof of age, and explain that sales of Tobacco Products to persons under twenty-one (21) years of age may subject the Tobacco Retailer to penalties as provided in this chapter.

(g) No tobacco retail sales license shall be issued to a person under twenty-one (21) years of age.

Section 235A.03 Tobacco Retail Sales License Fee

(a) The fee for a tobacco retail sales license shall be used to cover and shall not exceed the administrative cost for licensing, community outreach, education and training, retail inspections, compliance checks and general enforcement of the provisions authorized by this chapter.

(b) The fee for a tobacco retail sales license shall be set by the City’s Board of Control and updated from time-to-time as necessary. The fee is due at the time of application and is not refundable.

Section 235A.04 Restrictions on the Sale of Tobacco Products

(a) *Age Restriction.* No Tobacco Retailer or its agent, employee, or representative shall sell or distribute any Tobacco Product to any person under twenty-one (21) years of age, except if a person is participating in a research protocol described in division (e) of Section 607.15 of these Codified Ordinances and meets the requirements therein.

(b) *Age Verification.* Tobacco Retailers or their agents, employees, or representatives shall verify by means of government-issued photographic identification that the purchaser is at least twenty-one (21) years of age.

(c) *Signage.* Signs reading, “THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER 21 IS PROHIBITED BY LAW” shall be legibly printed in letters at least one-inch-high and shall be posted clearly and conspicuously in every location where Tobacco Products are sold. Selling Tobacco Products in any place that does not have a sign consistent with this division is prohibited by law and punishable under this chapter.

Section 235A.05 Self-Service Display Restrictions

(a) No Tobacco Retailer or its agent, employee, or representative shall sell or distribute Tobacco Products by or from a Self-Service Display except in places where persons under the age of twenty-one (21) are not permitted access.

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(b) The Commissioner of Assessments and Licenses, upon the recommendation and order of the Commissioner of Environmental Health, shall suspend the applicable license of a Tobacco Retailer in violation of division (a) until the Tobacco Products have been placed behind a counter or locked doors.

Section 235A.06 Enforcement

(a) This chapter shall be enforced by the Commissioner of Environmental Health and any other officer or employee designated for that purpose by the enforcement of this Health Code.

(b) All Tobacco Retailers must be open to inspection by the Department or its Authorized Agent during regular business hours.

(c) All Tobacco Retailers may be subject to at least two (2) compliance checks annually. The Commissioner of Environmental Health, or his or her designee, may conduct compliance checks by engaging persons between the ages of eighteen (18) and twenty (20) to enter the premises of Tobacco Retailers to attempt to purchase Tobacco Products. Follow-up compliance check(s) of all non-compliant Tobacco Retailers are required within three (3) months of any violation of this chapter.

(d) The results of all compliance checks and inspections are to be kept and available to the public upon request and may be published on the Department’s web page at least annually.

(e) Any person who desires to register a complaint of an alleged violation of this chapter or Section 607.15 of these Codified Ordinances may do so by contacting the Commissioner of Environmental Health, and the Commissioner shall investigate the alleged violation.

Section 235A.07 Violations and Civil Penalties

(a) The Commissioner of Environmental Health, and any authorized City officer or employee, who upon information or observation ascertains a violation of this chapter or Section 607.15 of these Codified Ordinances, may impose civil fines on the Tobacco Retailer. The fines are as follows and shall be adjusted in proportion to any increases in the previous year in the consumer price index for all Urban Consumers (CPI-U), as published by the Bureau of Labor Statistics, U.S. Department of Labor:

- (1) For a first violation, a fine of five hundred dollars (\$500.00);
- (2) For a second violation within a thirty-six (36) month period, a fine of seven hundred fifty dollars (\$750.00) and a seven (7) day suspension of the applicable tobacco retail sales license;
- (3) For a third violation within a thirty-six (36) month period, a fine of one thousand dollars (\$1,000.00) and a thirty (30) day suspension of the applicable tobacco retail sales license; and
- (4) For a fourth violation and each subsequent violation thereafter within a thirty-six (36) month period, a fine of one thousand dollars (\$1,000.00) and the applicable tobacco retail sales license of the Tobacco Retailer shall be revoked.

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(b) Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense. The determination that a violation has occurred shall be in writing and mailed to the Tobacco Retailer by the Commissioner of Environmental Health, no later than thirty (30) days from the date of the violation. The written notice shall specify the chapter and section that the Tobacco Retailer violated. A civil penalty imposed under division (a) above may be appealed to the Director in writing within twenty (20) days from the date of the civil penalty. The Director shall have jurisdiction to affirm or reverse. A person aggrieved by a final decision of the Director may further appeal to the Board of Zoning Appeals within thirty (30) days after the Director's written decision.

(c) A tobacco retail sales license issued under this chapter may also be denied, suspended, or revoked by the Commissioner of Assessments and Licenses, upon the recommendation and order of the Commissioner of Environmental Health and through written notice, should the Tobacco Retailer or Tobacco Retailer's agent, employee, or representative directly or indirectly:

- (1) Sell Tobacco Products without a valid tobacco retail sales license;
- (2) Fail to pay fines issued in accordance with this chapter;
- (3) Have a tobacco retail sales license revoked within the preceding twelve (12) months of the date of application for a tobacco retail sales license;
- (4) Fail to provide required information or provide false or misleading information on the application for a tobacco retail sales license;
- (5) Violate any federal, state, or local tobacco laws; or
- (6) Sell or distribute marijuana without an applicable state-issued license, or otherwise engage as a medical or adult-use marijuana operator, cultivator, processor, dispensary, laboratory, or entity as defined in Sections 347.19(b) and 347.191(b) of these Codified Ordinances without an applicable state-issued license.

(d) All Tobacco Products shall be removed from the premises upon suspension or revocation of a tobacco retail sales license. Failure to remove all Tobacco Products shall constitute a separate violation punishable by a fine of five hundred dollars (\$500.00) for each and every day of noncompliance.

(e) A violation of Section 235A.04 is hereby declared to be a nuisance which affects and endangers the public health. The Commissioner of Environmental Health and any authorized City officer or employee who, upon information or by observation ascertains a violation of Section 235A.04, may impose the penalties set forth in this chapter and in Section 201.99 of these Codified Ordinances. Enforcement of this section is in addition to any other method of enforcement provided in these Codified Ordinances and state law.

Section 235A.08 Public Education

The Director, or his or her Authorized Agent, shall engage in a continuing public health education program to explain and clarify the purposes and requirements of this

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chapter to Tobacco Retailers and the public. The program may include publication of a brochure in writing and online for Tobacco Retailers to explain the requirements of this chapter.

Section 235A.09 Rulemaking Authority

The Director is hereby authorized to promulgate rules and regulations to carry out the purpose and intent of this chapter in order to protect the public health, safety and welfare which shall be effective thirty (30) days after their publication in the *City Record*.

Section 235A.10 Tobacco Enforcement and Education Fund

All fees and civil fines collected from licensing and infractions of this chapter are to be deposited into the "Tobacco Enforcement and Education Fund" administered by the Department to cover the administrative costs for licensing, community outreach, education and training, retail inspections, and compliance checks.

Section 235A.11 Severability

The provisions of this chapter are severable, and if any provision, clause, sentence, or paragraph of this chapter or the application thereof to any person or circumstances are held by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such a ruling shall not affect the other parts of this chapter that can be given effect.

Section 235A.99 Penalty

A Tobacco Retailer that engages in the sale of Tobacco Products without a valid tobacco retail sales license issued pursuant to this chapter shall be guilty of distribution of Tobacco Products without a tobacco retail sales license, a misdemeanor of the first degree and shall be fined not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000.00). If the offender previously has been convicted of a violation of this section, then the Tobacco Retailer shall be denied a tobacco retail sales license for a period of five (5) years.

Section 2. That the enactment of new Sections 235A.01 through 235A.11 and 235A.99 shall be effective one hundred and eighty (180) days after the effective date of this ordinance.

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:nl
2-10-2025
FOR: Director Margolius and Council Members Conwell, Griffin, Santana and Kazy

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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

FILED WITH COMMITTEE

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

FILED WITH COMMITTEE

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