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Ordinance No. 184-2023

By Council Members Conwell and Griffin (by departmental request)

AN EMERGENCY ORDINANCE

To supplement the Codified Ordinances of Cleveland, Ohio, 1976, by enacting new Sections 235A.01 through 235A.11, relating to tobacco retail licensing and to amend Section 607.15 relating to the illegal distribution of cigarettes, other tobacco products or alternative nicotine products.

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 2021 National Youth Tobacco Survey on the use of e-cigarettes show that over 11% of, or more than two (2) million, U.S. middle and high school students reported current e-cigarette use, where almost 40% used e-cigarettes on a frequent basis and almost 85% 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, menthol cigarettes have been historically heavily marketed toward Black Americans, and the Food and Drug Administration (FDA) notes that a ban on menthol cigarettes would save the lives of 92,000 to 238,000 African Americans; 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 menthol and other flavored products; and

WHEREAS, heart disease and cancer, both tobacco-related diseases, are the top two leading causes of death among African Americans. African Americans, and particularly males, have experienced lung cancer at higher rates than Whites for many years; and

WHEREAS, over 70% of African American smokers prefer menthol cigarettes, compared with 30% of White smokers attributed to the tobacco industry's targeted advertising of the Black urban community; 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-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 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 his or her designee.

(e) "*Distribute"* means giving, providing, or delivering Tobacco Products as defined in this section.

(f) *"Electronic Smoking Device"* means any device that may be used to deliver any aerosolized or vaporized nicotine or any other substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic Smoking Device includes any component, part, or accessory of such a device, whether or not sold separately, and also includes any substance intended to be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic Smoking Device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

(g) *"Flavored Shisha Tobacco Product"* means a Flavored Tobacco Product smoked or intended to be smoked in a Hookah. *"Flavored Shisha Tobacco Product"* includes, and may be referred to as, Hookah tobacco, waterpipe tobacco, maassel, narghile, and argileh.

(h) "*Flavored Tobacco Product*" means any Tobacco Product that imparts a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a Tobacco Product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, or any candy, dessert, alcoholic beverage, herb, or spice.

(i) *"Hookah"* means a type of water pipe that is used to smoke Flavored Shisha Tobacco Products, which has a long, flexible tube to draw aerosol through water. This device has components that may include heads, stems, bowls, and hoses.

(j) *"Hookah Bar"* means a restaurant, tavern, brew pub, club, nightclub, bar, or any food service operation or retail food establishment that generates revenue from the sale for on-site consumption of Sisha Flavored Tobacco Products or Tobacco Products used with a Hookah; provided, that the restaurant, tavern, brew pub, club, nightclub, bar, or food service operation or retail food establishment has a valid smoking exemption from the Ohio Department of Health pursuant to section 3794.03 of the Revised Code and rule 3701-52-05 of the Ohio Administrative Code.

(k) "*Purchaser"* means any person who obtains or attempts to obtain a Tobacco Product.

(l) "*Sale"* or "s*ell"* means transferring, or offering or attempting to transfer, Tobacco Product, as defined in the section, for money, trade, barter, exchange, or other consideration.

(m) "*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.

(n) "*Tobacco Product(s)*" means: (1) any product containing, made of, or derived from tobacco or containing any form of nicotine that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, dissolved, inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (2) any Electronic Smoking Device as defined in this section and any substances that may be aerosolized or vaporized by such device, whether the substance contains nicotine; or (3) any component, part, or accessory of (1) or (2), whether any of these contains tobacco or nicotine, including, but not limited to, filters, rolling papers, blunt or hemp wraps, or pipes. Tobacco Product does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act

(o) *"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 such application is approved, the Commissioner shall issue a tobacco retail sales license. If the application is denied, 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 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 the administrative cost for licensing, community outreach, education and training, retail inspections, and compliance checks. The tobacco retail sales license fee should not exceed the cost of the license administration, community outreach, education and training, and enforcement program 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. Verification is not required for a person over thirty (30) years of age; provided however, that the purchaser appeared to be thirty (30) years of age or older shall not constitute a defense to a violation of this section.

(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.

(d) *Flavored Tobacco Product Sales Prohibition*. It shall be unlawful for a Tobacco Retailer or its agent, employee, or representative to sell or distribute any Flavored Tobacco Product. There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a Tobacco Retailer, manufacturer, or any employee or agent of a Tobacco Retailer or manufacturer (1) makes a public statement or claim that a Tobacco Product imparts a taste or smell other than the taste or smell of tobacco; or (2) uses text, images, or coloring on the Tobacco Product's labeling or packaging to explicitly or implicitly indicate that the Tobacco Product imparts a taste or smell other than the taste or smell of tobacco; or (3) takes action directed to consumers that would reasonably be expected to cause consumers to believe that the Tobacco Product imparts a taste or smell other than the taste or smell of tobacco.

(e) *Exception for Flavored Shisha Tobacco Products*. The prohibition under division (d) does not apply to Flavored Shisha Tobacco Products when consumed on-site in a Hookah Bar.

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.

(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, shall 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 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 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 the following civil fines on the Tobacco Retailer:

(1) For a first violation, a fine of $500.

(2) For a second violation within a thirty-six (36) month period, a fine of $750 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 $1,000 and a thirty (30) day suspension of the applicable tobacco retail sales license.

(4) For a fourth violation and each violation thereafter within a thirty-six (36) month period, a fine of $1,000 and the applicable tobacco retail sales license of the Tobacco Retailer shall be revoked.

(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; or

(5) Violate any federal, state, or local tobacco laws.

(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 $500.00 for each and every day of noncompliance.

(e) 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.

(f) 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 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 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 2. 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 in division (e) of Section 235A.01 of these Codified Ordinances.

(2) "Electronic smoking device" has the same meaning as in division (f) of Section 235A.01 of these Codified Ordinances.

(3) "Sale" or "Sell" has the same meaning as in division (l) of Section 235A.01 of these Codified Ordinances.

(4) "Tobacco" or "tobacco product" has the same meaning as in division (n) of Section 235A.01 of these Codified Ordinances.

(5) "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.~~

~~(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~~ to any ~~child~~ person under the age of twenty-one (21);

(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~~ is at

least thirty (30) years of age, provided however, that ~~such appearance~~ the individual appeared to be at least thirty (30) years of age shall not constitute a defense in any proceeding alleging the sale of cigarettes~~,~~ or tobacco products ~~or electronic cigarettes~~ to an individual under ~~eighteen (18)~~ twenty-one (21) years of age;

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

~~(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 division (c) of Section 235A.04 of these Codified Ordinances, ~~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 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; or

~~(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.

~~(c) 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 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 eighteen (18) has consented in writing to ~~the child~~ a person under the age of eighteen (18) 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), 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, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to a child or young adult 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) 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) The parent, guardian, or legal custodian of ~~the child~~ a person under the age of eighteen (18) has consented in writing to ~~the child~~ a person under the age of eighteen (18) participating in the research protocol, or ~~the young adult~~ a person the age of eighteen (18) or older, but under the age of twenty-one (21) has consented in writing, on his or her own behalf, to participate in the research protocol.

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

(3) ~~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.

~~(g)~~ (f) (1) Whoever violates division (b)(1), (3), (5), (6) or (7)~~, (8), or (9)~~ or ~~divisions~~ division (c) ~~or (d)~~ 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 a violation of division (b)(1), (3), (5), (6) or (7)~~, (8), or (9)~~ or ~~divisions~~ division (c) ~~or (d)~~ of this section or divisions (B)(1), (2), (4), or (5) or (C) of RC 2927.02, then illegal distribution of cigarettes~~,~~ ~~other~~ or other tobacco products~~, or alternative nicotine products~~ is a misdemeanor of the third degree.

(2) Whoever violates division ~~(b)(6)~~ (b)(4) 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~~ or tobacco products. Except as otherwise provided in this division, permitting a person under twenty-one years of age to use cigarettes~~, other~~ 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 a person under twenty-one years of age to use cigarettes~~, other~~ or other tobacco products, ~~or alternative nicotine products~~ is a misdemeanor of the third degree.

~~(h)~~ (g) Any cigarettes, ~~other~~ tobacco products, ~~alternative nicotine products,~~ or papers used to roll cigarettes that are sold or distributed to a 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 RC 2151.87 are subject to seizure and forfeiture as contraband under RC Chapter 2981.

Ordinance No. 184-2023

Section 3. 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 4. That the amendment and repeal of existing Section 607.15 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by Ordinance No. 737-15, passed December 7, 2015, and the enactment of new Sections 235A.01 through 235A.11, shall be effective one hundred and eighty (180) days after the effective date of this ordinance.

Section 5. 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.

KR:nl
2-6-2023
FOR: Director Margolius

Ord. No. 184-2023

By Council Members Conwell and Griffin (by departmental request)

AN EMERGENCY ORDINANCE

To supplement the Codified Ordinances of Cleveland, Ohio, 1976, by enacting new Sections 235A.01 through 235A.11, relating to tobacco retail licensing and to amend Section 607.15 relating to the illegal distribution of cigarettes, other tobacco products or alternative nicotine products.

READ FIRST TIME on FEBRUARY 6, 2023 **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

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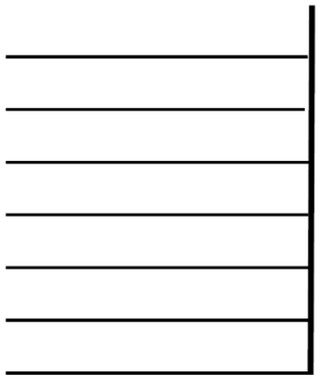
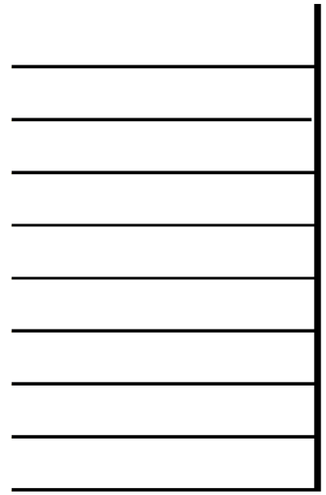
Published in the City Record _____

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

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