

ORDINANCE NO. 24-2018

To Enact New Chapter 765 “Tobacco Sales” of the Codified Ordinances of the City of Worthington to Require a License for the Sale of Tobacco and Prohibiting Tobacco Sales to Persons Under Twenty-One.

WHEREAS, research provided by a coalition of the Cancer Action Network of the American Cancer Society, the American Lung Association, the American Heart Association, and the Campaign for Tobacco-Free Kids indicates that 95% of adult smokers begin smoking before they turn twenty-one; and,

WHEREAS, current City ordinances permit the sale of tobacco products to individuals aged eighteen to twenty-one, leading to a higher probability of an individual becoming a lifetime smoker; and

WHEREAS, the City of Columbus, as well as the Cities of Dublin, Grandview Heights, New Albany, and Powell, have adopted ordinances that prohibit sale of tobacco to individuals under the age of twenty-one; and,

WHEREAS, the City of Worthington has contracted with the Columbus Board of Health to provide public health services to the City of Worthington and its residents; and,

NOW, THEREFORE, BE IT ORDAINED by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

SECTION 1. That Part Seven of the Codified Ordinances of the City of Worthington, “Business Regulation Code,” be and the same is hereby amended to add new Chapter 765 “Tobacco Sales” to read as follows:

**CHAPTER 765
Tobacco Sales**

265.01 DEFINITIONS

As used in this chapter:

(A) “Department” means the Columbus City Health Department and its authorized employees and agents.

(B) “Electronic smoking device” means any device that can be used to deliver aerosolized or vaporized nicotine 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 includes any substance intended to be aerosolized or vaporized during the use of the device. Electronic smoking device does not include drugs, devices, or

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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.

(C) "Licensee" means a person that applied for and was issued a retail tobacco sales license or temporary retail tobacco product paraphernalia sales license.

(D) "Product Paraphernalia" means any product that is used to assist in chewing, smoking, absorbing, dissolving, inhaling, or any other consumption of nicotine to include, but not limited to pipes, rolling papers, and electronic cigarette cases.

(E) "Retail Tobacco Sales" means the act of giving, selling or otherwise distributing tobacco products in a retail setting, including but not limited to gas stations, convenience stores, carry out markets, groceries, supermarkets, drug stores, vape shops and hookah bars.

(F) "Temporary Retail Tobacco Product Paraphernalia Sales" means the act of giving, selling or otherwise distributing tobacco product paraphernalia at an event for not more than five consecutive days.

(G) "Tobacco Product" means any product that is made from or derived from tobacco, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus. The term also includes tobacco product paraphernalia, including but not limited to, electronic smoking devices and any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, or liquids used in electronic smoking devices, whether or not they contain nicotine. 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.

(H) "Underage Buy Attempt" means a person, authorized by the Department, under the age of 21, who requests purchase of tobacco products or product paraphernalia from a retailer or a person under age 30 who requests purchase of tobacco products or product paraphernalia from a retailer without presenting identification.

265.02 LICENSE APPLICATION

(A) All retailers of tobacco products and/or tobacco product paraphernalia shall apply for a valid retail tobacco sales license or temporary retail tobacco product paraphernalia sales license. For the purposes of this Chapter, retailers shall include any person performing retail tobacco sales or temporary retail tobacco product paraphernalia sales. Retail tobacco sales licenses shall be issued by the department annually. Temporary retail tobacco product paraphernalia sales licenses shall be valid for not longer than five days. A license shall be required for each location where retail tobacco product sales or retail

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tobacco product paraphernalia sales are conducted and is non-transferable.

(B) Any retailer applying for a retail tobacco sales license or temporary retail tobacco product paraphernalia sales license shall submit a current and valid vendor's license issued by the Ohio Department of Taxation to the Department, if required by law.

(C) The annual retail tobacco sales license fee shall be \$150. The license shall be valid beginning on the first day of October through the last day of September of the following year. A license issued to a new licensee after the first day of July and before the first day of October shall not expire until the last day of September of the following year. A penalty equal to twenty-five percent of the applicable license fee shall be assessed by the Department for license fee payments that are not received or postmarked by the first of October.

(D) The temporary retail tobacco product paraphernalia sales license fee shall be \$50. The license shall be valid for no longer than five days and limited to a single event. The application shall be made at least ten days prior to the event.

(E) License fees are due at the time of application and are not refundable.

265.03 LICENSE APPLICATION DENIAL, RENEWAL DENIAL, SUSPENSION, AND REVOCATION

(A) Applications for retail tobacco sales licenses and temporary tobacco product paraphernalia sales licenses may be denied, and such licenses may be suspended or revoked for any of the following:

- (1) Observation by the Department or its authorized agent that the licensee or any agent, employee, or representative of said licensee has violated Section 265.07(A)(1) or (A)(3) of the Codified Ordinances.
- (2) Failure by the licensee to post signage as required by Section 265.04 of the Codified Ordinances.
- (3) The applicant or licensee having a conviction for violating Sections 265.06 or 265.07 of the Codified Ordinances or Sections 2329.13 or 2329.14 of the Columbus City Code. In the case of licensees, convictions for violations of Sections 265.06 or Section 265.07 of the Codified Ordinances or Section 2329.13 or 2329.14 of the Columbus City Code shall be a sufficient basis for denying a license renewal, for license suspension, or license revocation if the date of conviction is within two years of the issuance of the current retail tobacco sales license or temporary product paraphernalia retail tobacco sales license.

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- (4) An order by a court of competent jurisdiction that a retail tobacco sales location or temporary retail tobacco product paraphernalia sales owned and/or operated by the licensee constitutes a public nuisance.
- (5) Information contained in the application is misleading, inaccurate, or false.
- (6) The licensee fails to comply with applicable federal, Ohio, and city codes including, but not limited to, building, health and fire.
- (7) The licensee has outstanding fines, pursuant to Section 265.05(B) of the Codified Ordinances.

(B) Any person whose retail tobacco sales license or temporary retail tobacco product paraphernalia sales license has been proposed to be suspended or revoked shall be notified in writing by the Department. Appeals of such action may be made in accordance with Columbus City Health Code Section 203.10.

(C) Any person whose application for a retail tobacco sales license or temporary retail tobacco product paraphernalia sales license is denied shall be notified in writing by the Department. Appeals of such action may be made in accordance with Columbus City Health Code Section 203.08.

265.04 SIGN DISTRIBUTION AND POSTING

(A) The Department shall make signs available to licensees of retail tobacco sales and temporary retail tobacco product paraphernalia sales. Signs shall be provided by the Department at the time of license approval or renewal, and upon request.

(B) The licensee shall post the signs provided by the department at the point of transaction, which may include but are not limited to, cash registers, sales counters or on any display cases of tobacco products and tobacco product paraphernalia. Signage shall be prominently displayed and not obscured.

265.05 CIVIL ENFORCEMENT

(A) The Department shall conduct an inspection, which shall include an underage buy attempt, at least once per licensing period for all licenses.

(B) If the Department observes violation(s) of this Chapter at a retail tobacco sales location or at a temporary retail tobacco product paraphernalia sales event, the following schedule of civil penalties shall be imposed on the licensee, in addition to the sanctions specified in Section 265.03(A):

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- (1) For a first violation, \$500.00.
- (2) Second and subsequent violations within two years of the first violation, \$1,000 per violation.
- (3) Violations of this Chapter which occur more than two years after a previous violation shall not be considered a second or subsequent violation of this Chapter if there has been no finding of a violation in the intervening time.
- (4) Licensees have the right to appeal civil penalties in accordance with Columbus City Health Code 203.08.

(C) The Department of Public Safety, Division of Police, retains full authority to enforce Sections 265.06 and 265.07 of the Codified Ordinances.

265.06 DISTRIBUTION OF TOBACCO PRODUCTS WITHOUT A LICENSE

(A) No retailer of tobacco products, or product paraphernalia shall give, sell, or otherwise distribute cigarettes, other tobacco products, papers used to roll cigarettes, or other product paraphernalia without a valid license issued by the Columbus Board of Health;

(B) Whoever violates this section is guilty of distribution of cigarettes, or other tobacco products, or product paraphernalia without a license, a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section, Section 265.07 of the Codified Ordinances, Sections 2329.13 or 2329.14 of the Columbus City Code, or Section 2927.02 of the Ohio Revised Code, then the retailer shall be denied a license for distribution of cigarettes or other tobacco products or product paraphernalia for a period not to exceed 5 years.

265.07 ILLEGAL DISTRIBUTION OF TOBACCO PRODUCTS

(A) No manufacturer, producer, distributor, wholesaler, or retailer of cigarettes or other tobacco products or product paraphernalia, or any agent, employee, or representative of a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes or other tobacco products or product paraphernalia shall do any of the following:

- (1) Give, sell, or otherwise distribute cigarettes, other tobacco products, or product paraphernalia to any person under Twenty-one (21) years of age;
- (2) Give, sell, or otherwise distribute cigarettes, other tobacco products, or product paraphernalia in any place that does not have posted in a conspicuous place a sign stating that giving, selling or otherwise distributing cigarettes, or

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other tobacco products, or product paraphernalia to a person under Twenty-one (21) years of age is prohibited by law.

(3) Give, sell, or otherwise distribute cigarettes, other tobacco products, or product paraphernalia without viewing proof of age demonstrating the recipient is at least Twenty-one (21) years of age, except that no such verification is required for a recipient over the age of Thirty (30). That a person appeared to be over the age of Thirty (30) shall not constitute a defense to a violation of this section.

(B) No person shall give, sell or offer to sell cigarettes, other tobacco products, or product paraphernalia by or from a vending machine.

(C) As used in this section, "vending machine" means any mechanical or electronic device designed to do both of the following:

(1) Receive a coin, bill, token, or credit card, including, but not limited to, a card, code, device, or other means of access to a customer's account, made for that purpose;

(2) In return for the insertion or deposit of a coin, bill, token, or credit card, automatically dispense property, provide a service, or grant a license.

(E) As used in this section "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 Sections 4507.50 to 4507.52 of the Ohio Revised Code demonstrating that the recipient or purchaser is at least 21 years of age.

(F) Whoever violates this section is guilty of illegal distribution of cigarettes, other tobacco products, or product paraphernalia, a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of this section, Section 765.06 of the Codified Ordinances, Sections 2329.13 or 2329.14 of the Columbus City Code, or Section 2927.02 of the Ohio Revised Code, then illegal distribution of cigarettes or other tobacco products is a misdemeanor of the third degree.

265.08 RULE MAKING AUTHORITY

The Columbus Board of Health is hereby authorized to promulgate additional rules and regulations to carry out the purpose and intent of this Chapter in order to protect the public health, safety and welfare. The Columbus Board of Health shall provide City Council a copy of the proposed rules and regulations at least 60 days prior to their proposed effective date. The rules and regulations shall become effective as proposed unless City Council takes action to modify or reject them.

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265.09 TOBACCO ENFORCEMENT AND EDUCATION FUND

All fines and penalties collected as a result of enforcement of the provisions of this Chapter shall be paid directly to the Columbus Board of Health to be deposited into a "Tobacco Enforcement and Education Fund" to be administered by the Columbus Health Department for enforcement, community education, and compliance efforts towards state and local tobacco product sales and use laws.

265.10 EFFECT OF PARTIAL INVALIDITY

The provisions of this Chapter are hereby declared to be severable, and if any section, subsection, or clause of this Chapter is 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. The provisions of Chapter 265 shall become effective on July 1, 2018. However, no fines or penalties shall be imposed for violations of Chapter 265 that occur on or before October 1, 2018.

SECTION 3. That notice of passage of this Ordinance shall be posted in the Municipal Administration Building, the Worthington Library, the Griswold Center and the Worthington Community Center and shall set forth the title and effective date of the Ordinance and a statement that the Ordinance is on file in the office of the Clerk of Council. This Ordinance shall take effect and be in force from and after the earliest period allowed by law and by the Charter of the City of Worthington, Ohio.

Passed May 21, 2018

/s/ Bonnie D. Michael
President of Council

Attest:

/s/ D. Kay Thress
Clerk of Council

Introduced May 7, 2018
P.H. May 21, 2018
Effective June 13, 2018