

Ordinance No. **134-2016**

By – Councilperson Hill

An ordinance amending Sections 537.20 and 537.205 of the “Offenses Relating to Persons” Chapter of the General Offenses Code of the Codified Ordinances for the City of Euclid to update the ordinances to include alternative nicotine products and to prohibit the sale and distribution of cigarettes, tobacco products and alternative nicotine products for persons under the age of 21.

WHEREAS, Ohio Revised Code was updated several years ago to include alternative nicotine products like e-cigarettes; and

WHEREAS, data from the most recent Cuyahoga County Youth Risk Behavior Survey in 2013 indicates over 22% of high school students in Cuyahoga County use tobacco products; and

WHEREAS, according to a recent report by the Ohio State University College of Public Health, raising the minimum age to buy and sell cigarettes and other tobacco products to 21 would save lives by preventing adolescents and young adults from starting smoking; and

WHEREAS, the health of the City of Euclid’s youth would benefit from changing the age from 18 to 21 to help deter more youth from using tobacco products.

NOW, THEREFORE, be it ordained by the Council of the City of Euclid, State of Ohio:

Section 1: That Sections 537.20 and 537.205 of the “Offenses Relating to Persons” Chapter of the General Offenses Code of the Codified Ordinances for the City of Euclid are hereby amended to read as follows:

537.20 ILLEGAL DISTRIBUTION OF CIGARETTES OR OTHER TOBACCO PRODUCTS; TRANSACTION SCANS.

(a) Illegal distribution of cigarettes or other tobacco products.

(1) As used in this section:

A. "Alternative nicotine product" means 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. "Child" has the same meaning as in Ohio R.C. 2151.011.

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 cigarette" means 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.

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 ~~18~~ 21 years of age or older.

G. "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.

H. "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 any 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 child;

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 posted in a conspicuous place a sign stating that giving, selling, or otherwise distributing cigarettes, other tobacco products, **alternative nicotine products**, or papers used to roll cigarettes to a person under ~~18~~ **21** years of age is prohibited by law;

C. Knowingly furnish any false information regarding the name, age, or other identification of any child with purpose to obtain cigarettes, other tobacco products, **alternative nicotine products**, or papers used to roll cigarettes for that child;

D. Manufacture, sell, or distribute in this State any pack or other container of cigarettes containing fewer than 20 cigarettes or any package of roll-your-own tobacco containing less ~~that~~ **than** six-tenths of one ounce of tobacco;

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

(3) 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:

A. An area within a factory, business, office, or other place not open to the general public;

B. An area to which children are not generally permitted access;

C. Any other place not identified in division (a)(3)A. or (a)(3)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 who owns or operates the place, or an employee of that person, so that all cigarettes, ~~other tobacco products,~~ **and alternative nicotine** purchases from the vending machine will be readily observed by the person who owns or operates the place, or an employee of that 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 that person.

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

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

A. The child was accompanied by a parent, spouse who is ~~18~~ **21** years of age or older, or legal guardian of the child.

B. The person who gave, sold, or distributed cigarettes, other tobacco products, **alternative nicotine products**, or papers used to roll cigarettes to a child under division (a)(2)A. of this section is a parent, spouse who is ~~18~~ **21** years of age or older, or legal guardian of the child.

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

A. The parent, guardian, or legal custodian of the child has consented in writing to the child participating in the research protocol.

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

C. The child is participating in the research protocol at the facility or location specified in the research protocol.

(6) A. Whoever violates division (a)(2)A., (a)(2)B., (a)(2)D. or (a)(2)E. or (a)(3) of this section is guilty of illegal distribution of cigarettes, ~~or~~ other tobacco products, **or alternative nicotine products** a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of division (a)(2)A., (a)(2)B., (a)(2)D., (a)(2)E. or (a)(3) of this section or a substantially equivalent state law or municipal ordinance, illegal distribution of cigarettes, ~~or~~ other tobacco products, **or alternative nicotine products** is a misdemeanor of the third degree.

B. Whoever violates division (a)(2)C. of this section is guilty of permitting children to use cigarettes, ~~or~~ other tobacco products, **or alternative nicotine products** a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of division (a)(2)C. or a substantially equivalent state law or municipal ordinance, permitting children to use cigarettes, ~~or~~ 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 child in violation of this division (a) and that are used, possessed, purchased, or received by a child in violation of Ohio R.C. 2151.87 are subject to seizure and forfeiture as contraband under Ohio R.C. 2933.42 and 2933.43.

(b) Tobacco Product Transaction Scan.

(1) As used in this division and division (c) of this section:

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

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

C. "Seller" means a seller of cigarettes, or other tobacco products, or alternative nicotine products and includes any person whose gift of or other distribution of cigarettes, or other tobacco products, or alternative nicotine products is subject to the prohibitions of division (a) of this section.

D. "Transaction scan" means the process by which a 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, or other tobacco products, or alternative nicotine products.

E. "Transaction scan device" means 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 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, or other tobacco products, or alternative nicotine products.

B. If the information deciphered by the transaction scan performed under division (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, or other tobacco products, or alternative nicotine products to the card holder.

C. Division (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, or 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 division (b) and division (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 division (b)(4)A. of this section, except for purposes of division (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 division (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 division (c) of this section or another section of these Codified Ordinances or the Ohio Revised Code.

(5) Nothing in this division (b) or division (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, or other tobacco products, or alternative nicotine products.

(6) Whoever violates division (b)(2)B. or (b)(4) of this section is guilty of engaging in an illegal cigarettes, or other tobacco products, or alternative nicotine products transaction scan, and the court may impose upon the

offender a civil penalty of up to one thousand dollars (\$1,000.00) 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 division (a) of this section in which the age of the purchaser or other recipient of cigarettes, or 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, or 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, or 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 division (c)(1) of this section, the trier of fact in the action for the alleged violation of division (a) of this section shall consider any written policy that the seller has adopted and implemented and that is intended to prevent violations of division (a) of this section. For purposes of division (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, or other tobacco products, or alternative nicotine products is ~~18~~ 21 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 division (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 division (d), "authorized recipient of tobacco products" means a person who is:

A. Licensed as a cigarette wholesale dealer under Ohio R.C. 5743.15;

B. Licensed as a distributor of tobacco products under Ohio R.C. 5743.61;

C. An export warehouse proprietor as defined in Section 5702 of the Internal Revenue Code;

D. An operator of a customs bonded warehouse under 19 U.S.C. § 1311 or 19 U.S.C. § 1555;

E. An officer, employee, or agent of the Federal government or of this State acting in the person's official capacity;

F. A department, agency, instrumentality, or political subdivision of the Federal government or of this State;

G. A person having a consent for consumer shipment issued by the Tax Commissioner under Ohio R.C. 5743.71.

(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 person shall cause to be shipped any cigarettes to any person in this Municipality other than an authorized recipient of tobacco products.

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

(4) No person engaged in the business of selling cigarettes who ships or causes to be shipped cigarettes to any person in this Municipality in any container or wrapping other than the original container or wrapping of the cigarettes shall fail to plainly and visibly mark the exterior of the container or wrapping in which the cigarettes are shipped with the words "cigarettes".

(5) A court shall impose a fine of up to one thousand dollars (\$1,000.00) for each violation of division (d)(3)A., (d)(3)B. or (d)(4) of this section.

(ORC 2927.023)

537.205 PURCHASE, USE OR POSSESSION OF ALTERNATIVE NICOTINE PRODUCT, CIGARETTES OR TOBACCO PRODUCTS BY MINORS.

(a) As used in this section: "alternative nicotine product," "cigarette," and "tobacco product" have the same meaning as in section 537.20 of the Codified Ordinances.

(b) No person under the age of eighteen years shall pay for, share the cost of, or attempt to purchase, any alternative nicotine product, cigarette or tobacco product ~~tobacco or tobacco products~~ or shall knowingly possess or use any alternative nicotine product, cigarette or tobacco product ~~tobacco or tobacco products~~ in any public or private place.

(c) Whoever violates this section is guilty of a misdemeanor of the first ~~first~~ fourth degree and shall be dealt with in accordance with Juvenile Court law and procedure.

Section 2: That Sections 537.20 and 537.205 of the "Offenses Relating to Persons" Chapter of the General Offenses Code of the Codified Ordinances for the City of Euclid are hereby amended.

Section 3: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4: That this ordinance shall be in full force and effect from and after the earliest period allowed by law.

Attest:

Clerk of Council

President of Council

Passed: November 21, 2016

Approved:

Effective: December 21, 2016

Mayor