

ORDINANCE NO. 2018-83

AN ORDINANCE TO ENACT CHAPTER 527 OF THE KENT CODIFIED ORDINANCES, TITLED "ILLEGAL DISTRIBUTION OF CIGARETTES, OTHER TOBACCO PRODUCTS, ELECTRONIC CIGARETTES OR ALTERNATIVE NICOTINE PRODUCTS," AND DECLARING AN EMERGENCY.

WHEREAS, every year tobacco products lead to the deaths of nearly one-half million Americans and drain more than \$268 billion in directly related healthcare and lost productivity costs; and

WHEREAS, nearly all adult smokers began smoking before the age of 18, while very few smokers start smoking after the age of 21, according to a 2015 white paper published by The Ohio State University College of Public Health; and

WHEREAS, studies have shown that many children under the age of 18 who smoke obtain their cigarettes from acquaintances who are 18-20; and

WHEREAS, to date, hundreds of communities across the United States, as well as the states of Hawaii and California, have passed legislation to raise the minimum age for tobacco sales to 21 years old; and

WHEREAS, several municipalities in the State of Ohio, including the City of Akron, have adopted ordinances increasing the age for tobacco sales to 21 years old; and

WHEREAS, raising the age for tobacco sales in the City of Kent would lessen the accessibility of tobacco to minors and further the City's interest in furthering the health, safety, and general welfare of the residents of the City of Kent.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kent, Portage County, Ohio, at least a majority of all members elected thereto concurring:

SECTION 1. That Chapter 527, titled "Illegal Distribution of Cigarettes, Other Tobacco Products, Electronic Cigarettes or Alternative Nicotine Products," in the General Offenses Code, is hereby enacted and attached hereto and made a part hereof as "Exhibit A".

SECTION 2. 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 of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare of the residents of this

City, for which reason and other reasons manifest to this Council this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: July 18, 2018
Date

J T F
Jerry T. Fiala
Mayor and President of Council

EFFECTIVE: July 18, 2018
Date

ATTEST: Tara Grimm
Tara Grimm, MMC
Clerk of Council

I, TARA GRIMM, CLERK OF COUNCIL FOR THE CITY OF KENT, COUNTY OF PORTAGE, AND STATE OF OHIO, AND IN WHOSE CUSTODY THE ORIGINAL FILES AND RECORDS OF SAID COUNCIL ARE REQUIRED TO BE KEPT BY THE LAWS OF THE STATE OF OHIO, HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF ORDINANCE No. _____, ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON _____, 20_____.

(SEAL)

TARA GRIMM, MMC
CLERK OF COUNCIL

EXHIBIT "A"

§ 527.01 Definitions.

(a) As used in this Chapter:

(1) "Age verification" means a service provided by an independent third party (other than a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes) that compares information available from a commercially available database, or aggregate of databases, that regularly are used by government and businesses for the purpose of age and identity verification to personal information provided during an internet sale or other remote method of sale to establish that the purchaser is twenty-one-years of age or older.

(2) "Alternative nicotine product" means, subject to subsection (a)(2)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:

1. Any cigarette or other tobacco product;
2. Any product that is a "drug" as that term is defined in 21 U.S.C. 321(g)(l);
3. Any product that is a "device" as that term is defined in 21 U.S.C. 321(h);
4. Any product that is a "combination product" as described in 21 U.S.C. 353(9).

(3) "Child" has the same meaning as in Ohio R.C. 2151.011.

(4) "Cigarette" includes clove cigarettes and hand-rolled cigarettes.

(5) "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.

(6) "Electronic cigarette" means, subject to subsection (a)(6)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 subsections (a)(2)B(1) to (4) of this section.

- (7) "Person under twenty-one" means, for purposes of this section, a person who has reached the age of eighteen years but has not yet reached the age of twenty-one years.
- (8) "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 eighteen years of age or older.
- (9) "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.
- (10) "Vending machine" has the same meaning as "coin machine" in Ohio R.C. 2913.01.

§ 527.02 Prohibitions

- (a) No manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, electronic cigarettes, alternative nicotine products, or papers used to roll cigarettes, no agent, employee, or representative of a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, electronic cigarettes, alternative nicotine products, or papers used to roll cigarettes, and no other person shall do any of the following:
 - (1) Give, sell or otherwise distribute cigarettes, other tobacco products, electronic cigarettes, alternative nicotine products, or papers used to roll cigarettes to any child;
 - (2) Give away, sell or distribute cigarettes, other tobacco products, electronic cigarettes, 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, electronic cigarettes, alternative nicotine products, or papers used to roll cigarettes to a person under twenty-one years of age is prohibited by law;
 - (3) Knowingly furnish any false information regarding the name, age or other identification of any child or person under twenty-one with purpose to obtain cigarettes, other tobacco products, electronic cigarettes, alternative nicotine products, or papers used to roll cigarettes for that child or person under twenty-one;
 - (4) Manufacture, sell or distribute in this state any pack or other container of cigarettes containing fewer than twenty cigarettes or any package of roll-your-own tobacco containing less than six-tenths of one ounce of tobacco;
 - (5) Sell cigarettes, electronic cigarettes or alternative nicotine products in a smaller quantity than that placed in the pack or other container by the manufacturer;
 - (6) Give, sell or otherwise distribute electronic cigarettes, alternative nicotine products, papers used to roll cigarettes, or tobacco products other than cigarettes over the internet or through another remote method without age verification;

- (7) Give, sell or otherwise distribute cigarettes, other tobacco products, electronic cigarettes, alternative nicotine products, or papers used to roll cigarettes to any person under twenty-one.
- (b) No person shall sell or offer to sell cigarettes, other tobacco products, electronic cigarettes or alternative nicotine products by or from a vending machine, except in the following locations:
- (1) An area within a factory, business, office, or other place not open to the general public;
 - (2) An area to which children are not generally permitted access;
 - (3) Any other place not identified in subsection (b)(1) or (2) 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 that person, so that all cigarettes, other tobacco products, electronic cigarettes and alternative nicotine product 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.
 - (B) The vending machine is inaccessible to the public when the place is closed.
- (c) The following are affirmative defenses to a charge under subsection (a)(1) and (a)(7) of this section:
- (1) The child or person under twenty-one was accompanied by a parent, or spouse who is eighteen years of age or older, or is the legal guardian of the child.
 - (2) The person who gave, sold or distributed cigarettes, other tobacco products, electronic cigarettes, alternative nicotine products, or papers used to roll cigarettes to a child or to a person under twenty-one under division (a)(1) of this section is a parent, spouse who is eighteen years of age or older, or legal guardian of the child or person under twenty-one.
- (d) It is not a violation of subsection (a)(1), (a)(2), or (a)(7) of this section for a person to give or otherwise distribute to a child or person under twenty-one cigarettes, other tobacco products, electronic cigarettes, alternative nicotine products or papers used to roll cigarettes while the child or person under twenty-one is participating in a research protocol if all of the following apply:
- (1) The parent, guardian or legal custodian of the child has consented in writing to the child participating in the research protocol, or the person under twenty-one

has consented in writing on his or her own behalf;

- (2) An institutional human subjects protection review board, or an equivalent entity, has approved the research protocol; and
 - (3) The child or person under twenty-one is participating in the research protocol at the facility or location specified in the research protocol.
- (e) It is not a violation of (a)(7) of this section to give a person under twenty-one cigarettes, other tobacco products, electronic cigarettes, alternative nicotine products, or papers used to roll cigarettes if the transfer is done in the course of the person under twenty-one's employment and the person under twenty-one is not the end consumer of the cigarettes, other tobacco products, electronic cigarettes, alternative nicotine products, or papers used to roll cigarettes.

§ 527.03 Exemptions

Licensed businesses where all tobacco products, electronic cigarettes or alternative nicotine products that are sold are used and consumed exclusively on the premises where sold shall be exempt from the requirements of the Chapter.

§ 527.99 Penalty

- (a) Whoever violates this Chapter shall be subject to a Civil Penalty for illegal distribution of cigarettes, other tobacco products, electronic cigarettes or alternative nicotine products. Except as otherwise provided in this Section, illegal distribution of cigarettes, other tobacco products, electronic cigarettes or alternative nicotine products, whoever violates this Chapter shall be subject to a fine for a first violation. A civil fine of Five Hundred Dollars (\$500.00) shall be issued for a second violation of this Chapter. A civil fine of One Thousand Dollars (\$1,000.00) will be issued for all subsequent violations.
- (b) All fines collected by the Kent City Health Department pursuant to this Chapter shall be utilized for efforts to prevent smoking initiation by persons under the age of 21 or for efforts to promote smoking cessation, including supports for those who will no longer be able to purchase cigarettes, other tobacco products, e-cigarettes or alternative nicotine products pursuant to this Chapter.
- (c) Notwithstanding any other provision of this Title, authority to issue penalties under this Chapter shall rest with the Kent City Health Department. Penalties shall only be issued under this Chapter following the adoption of regulations by the Kent City Health Department relating to the enforcement of this Ordinance.