

Placed on first reading and referred to the Health and Human Services Committee 12/17/18, second reading 1/7/19. Please substitute for the original.

Anderson, Bullock, George, Litten,
O'Leary, O'Malley, Rader

ORDINANCE NO. 76-18

BY:

AN ORDINANCE to take effect at the earliest period allowed by law, enacting Chapter 1727, Cigarette and Tobacco Vendors; Sales to Persons Under 21, and repealing Section 521.14, Sale of Tobacco and Alternate Nicotine Products to Minors Prohibited; Vending Machines, of the Codified Ordinances of the City of Lakewood in order to amend and create regulations involving licensing for and sales of tobacco products.

WHEREAS, Tobacco kills over 480,000 people in the United States each year, and more than 95% of addicted smokers start before age 21; and

WHEREAS, the developing teenage brain is particularly vulnerable to the effects of nicotine, and about 350 youth become regular smokers each day in the United States; and

WHEREAS, this Council has determined that these amended regulations shall be established in the Code as a matter of local self-government and a matter of local police powers; and

WHEREAS, pursuant to the Constitution of the State of Ohio and the Ohio Revised Code, municipalities have the power of local self-government; and

WHEREAS, pursuant to the Constitution of the State of Ohio and the Ohio Revised Code, municipalities have the power to enact laws that are for the health, safety, welfare, comfort and peace of the citizens of the municipality; now, therefore

BE IT ORDAINED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. Chapter 1727, Cigarette and Tobacco Vendors: Sales to Minors, of the Codified Ordinances of the City of Lakewood, currently reading as follows:

CHAPTER 1727

Cigarette and Tobacco Vendors: Sales to Minors

- 1727.01 Definitions.
- 1727.02 Posting of signs.
- 1727.03 Identification required.
- 1727.04 License required.
- 1727.05 Fee.
- 1727.06 Nontransferability.
- 1727.07 Tobacco vending machines; illegal distribution of cigarettes or other tobacco products to minors.
- 1727.08 Out-of-package sales prohibited.

1727.09 Tobacco samples prohibited.
1727.10 Vendor assisted sales.
1727.11 Suspension of license.
1727.12 Nonretaliation.
1727.13 Public education.
1727.14 Severability.
1727.99 Penalty.

1727.01 DEFINITIONS.

As used in this chapter:

(a) "License" means a license issued by the City of Lakewood for retail sale of tobacco products.

(b) "Licensee" means the holder of a valid license for the retail sale of tobacco products.

(c) "Minor" means any person under eighteen years of age.

(d) "Public place" means any area to which the public is invited or in which the public is permitted, including, but not limited to, any right of way, mall or shopping center, park, playground and any other property owned by the City, and any school district or any park district.

(e) "Retailer" means a person or entity who offers or sells tobacco products or accessories to consumers.

(f) "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

(g) "Self-service displays" means open displays of tobacco products and point-of-sale tobacco promotional products that the public has access to without the intervention of a store employee.

(h) "Tobacco product" means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco or any other form of tobacco or tobacco papers which may be utilized for smoking, chewing, inhalation or other means of ingestion.

(i) "Tobacco vending machine" means any machine or device designated for or used for the vending of cigarettes, cigars, tobacco or tobacco products upon the insertion of coins, trade checks or slugs.

(j) "Vendor-assisted" means only a store employee has access to the tobacco product and assists the customer by supplying the product. The customer does not take possession of the product until after it is purchased.

1727.02 POSTING OF SIGNS.

Every place in the City where tobacco products are sold shall display at all times in a prominent place of the premises thereof, a printed card

which shall be furnished by the City and which shall read substantially as follows:

“Under the ordinances of the City of Lakewood, it is unlawful to sell, give or furnish to a person under eighteen years of age a cigarette or other tobacco products.”

1727.03 IDENTIFICATION REQUIRED.

No retailer shall sell or permit to be sold cigarettes or other tobacco products to an individual without requesting and examining photographic identification for the purpose of establishing the purchaser's age as eighteen or greater.

1727.04 LICENSE REQUIRED.

It shall be unlawful for a retailer to sell, give, furnish or otherwise provide cigarettes or other tobacco products unless that retailer holds and maintains a valid license from the City of Lakewood for each location in which tobacco products are sold. All such licenses shall be renewed annually. This section shall be effective forty days from the date Council adopts Chapter 1727.

1727.05 FEE.

The fee for obtaining or renewing a license shall be established by the Mayor or Director of Public Safety or his or her designee, and shall be sufficient to fund the administration, implementation and enforcement of this chapter.

1727.06 NONTRANSFERABILITY.

A tobacco retail license is nontransferable, except a new license will be issued to a tobacco retailer who changes location.

1727.07 TOBACCO VENDING MACHINES; ILLEGAL DISTRIBUTION OF CIGARETTES OR OTHER TOBACCO PRODUCTS TO MINORS.

(a) Any person, firm or corporation that owns, leases, possesses or controls one or more tobacco vending machines shall obtain a valid license for each machine pursuant to Section 1727.04.

(b) A licensee, or any agent, employee or representative of said licensee, convicted of violating Section 521.14 of the Lakewood Codified Ordinances shall have his or her license subject to suspension pursuant to Section 1727.11.

1727.08 OUT-OF-PACKAGE SALES PROHIBITED.

It is unlawful to sell cigarettes out of the manufactured package with required health warnings. It is unlawful to sell cigarettes in packages of fewer than twenty cigarettes per package.

1727.09 TOBACCO SAMPLES PROHIBITED.

No licensee shall knowingly distribute or furnish without charge or at nominal charge, or cause to be furnished or distributed without charge or at nominal charge, cigarettes or other tobacco products, or coupons for cigarettes or other tobacco products, in any public place or at any event open to the public, except in retail tobacco stores.

1727.10 VENDOR ASSISTED SALES.

It shall be unlawful for any person, business or tobacco retailer to sell, permit to be sold, or offer for sale any tobacco product by means of self-service displays or any other means other than vendor-assisted sales.

1727.11 SUSPENSION OF LICENSE.

(a) A licensee, or any agent, employee or representative of said licensee, convicted of violating Section 521.14 of the Lakewood Codified Ordinances shall have said license subject to suspension after notice and an opportunity to be heard as follows:

(1) In the case of a first violation, the licensee shall be fined two hundred dollars (\$200.00) and shall be notified in writing of penalties levied for further violations.

(2) In the case of a second violation in a two-year period, the licensee shall be fined five hundred dollars (\$500.00) and the license shall be suspended for not less than thirty consecutive business days or more than three months. Tobacco retailers must remove all tobacco merchandise from all areas accessible to the public while the license is suspended.

(3) In the case of three or more violations within a two-year period, the licensee shall be fined one thousand dollars (\$1,000) and the license shall be suspended for not less than six months or more than eighteen months. Tobacco retailers must remove all tobacco merchandise from all areas accessible to the public while the license is suspended.

(b) The Mayor or Director of Public Safety or his or her designee shall initiate the enforcement of Section 1727.11(a), against license holders, and shall conduct hearings upon the license holder's request. A licensee must request a hearing with the Mayor or Director of Public Safety within ten days of the notice of the action taken under subsection (a) hereof. Rulings made by the Mayor or Director of Public Safety or his designee regarding the suspension of a license, after an adequate hearing, shall be final.

1727.12 NONRETALIATION.

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment or customer because such employee, applicant or customer reported violations of any provisions of this chapter.

1727.13 PUBLIC EDUCATION.

The Mayor or Director of Public Safety or his or her designee shall engage in a continuing program to explain and clarify the purposes and requirements of this chapter to citizens affected by it, and to guide owners and operators and manager in their compliance with it. Public education will also promote an awareness of the grave health consequences of tobacco use.

1727.14 SEVERABILITY.

If any provision, clause, sentence or paragraph of this chapter or the application thereof to any person or circumstance shall be held to be invalid, such invalidity shall not affect the provisions of this chapter which can be given effect without the invalid provisions or application, and to this end the provisions are declared to be severable.

1727.99 PENALTY.

A violation of any section of this chapter shall subject the licensee, or anyone required to be a licensee, to a fine of five hundred dollars (\$500.00) per day for each violation. The Mayor or Director of Public Safety or his designee shall have the authority to enforce this chapter.

is hereby repealed, and new Chapter 1727, Cigarette and Tobacco Vendors; Sales to Persons Under 21, of the Codified Ordinances of the City of Lakewood, is hereby enacted to read as follows:

CHAPTER 1727

Cigarette and Tobacco Vendors: Sales to Minors

- 1727.01 Definitions.
- 1727.02 Sale to Persons Under 21 Prohibited.
- 1727.03 Annual Permit Required.
- 1727.04 Permit Revocation, Denial, o Suspension.
- 1727.05 Non-Transferability.
- 1727.06 Non-Retaliation.
- 1727.07 Posting of Signs; Education; Outreach.
- 1727.08 Enforcement; Appeals.
- 1727.09 Injunction Relief.
- 1727.10 Effective Date.
- 1727.99 Penalty.

1727.01 DEFINITIONS.

For the purpose of this Chapter:

- (a) "Distribute" means to furnish, give or provide tobacco products to the ultimate consumer of the tobacco product.
- (b) "Permit" means an annual permit issued by the City or the City's permitting agent for retail sale of tobacco products pursuant to Section 1727.03 herein.

(c) "Permittee" means the holder of a valid permit under this Chapter.

(d) "Permitting agent" means an entity with which the City of Lakewood has contracted to administer permit applications, enforcement, and/or provisions contained in this Chapter.

(e) "Person under 21" means a natural person who has not yet reached the age of 21 years.

(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 R.C. 4507.50 to 4507.52 that shows that a person is 21 years of age or older and not a person under 21.

(g) "Tobacco product" means any product that is made from tobacco or derived from tobacco or that contains nicotine, whether natural or synthetic, that is intended for human consumption or is likely to be consumed, whether smoke, heated, chewed, snorted, sniffed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, cigarettes, e-liquids, cigars, little cigars, pipe tobacco, chewing tobacco, snuff, or snus. "Tobacco product" also means electronic devices, including any device that can be used to deliver aerosolized or vaporized nicotine or any other substance to the person inhaling from the device including, but not limited to, e-cigarettes, e-cigars, e-pipes, vapor products, or e-hookahs. "Tobacco product" includes any component, part, or accessory used in the consumption of tobacco products, whether or not it contains nicotine including, but not limited to, filters, cartridges, pods, pens, rolling papers, or pipes. "Tobacco product" does not include any of the following:

(1) Any product that is a "drug" as that term is defined in 21 U.S.C. 321(g)(1); or

(2) Any product that is a "device" as that term is defined in 21 U.S.C. 321(h); or

(3) Any product that is a "combination product" as described in 21 U.S.C. 353(g).

1727.02 SALE TO PERSONS UNDER 21 PROHIBITED.

(a) No permittee or agent of permittee shall sell or otherwise distribute to any person under 21 any tobacco product within the City.

(b) Before selling or otherwise distributing any tobacco product to another person, the person selling or distributing the tobacco product shall verify the age of any person who appears to be under 30 years of age by a proof of age.

(c) No person shall sell or otherwise distribute tobacco products by or from a vending machine except in an area within a business office, or other place not open to the general public or in an area to which persons under 21 are not permitted.

(d) It shall not be a violation of this Section to sell or otherwise distribute any product that has been approved as a tobacco cessation aid by the United States Food and Drug Administration.

1727.03 ANNUAL PERMIT REQUIRED.

(a) No person shall engage in retail sales or distribution of tobacco products within the City without a valid permit issued by the City or its permitting agent.

(b) The following items shall be required in applying for a permit, or renewing a permit under this Section:

(1) A valid vendor's license from the Ohio Department of Taxation;

(2) If applicable, a license required by R.C. Chapter 5743;

(3) The location where the permit applicant proposes to engage in retail sales of tobacco products;

(4) A nonrefundable permit administration fee of \$100.00; and

(5) Such other information as determined by the City or its permitting agent to be necessary to administer the permitting system provided herein and to effectuate the purposes of this Chapter.

(c) A permit granted under this Section shall be valid from the date of issuance until December 31 of the year of issuance.

(d) Permit administration fees reinstatement fees, and civil penalties collected in administering this Chapter may be collected by the City or its permitting agent and shall be credited to the City's general fund to defray the costs of administration and enforcement of this Chapter. Alternatively, the City and its permitting agent may agree that the permitting agent will retain all or a portion of the fees as compensation for its services as the permitting agent.

(e) For purposes of this Section, "valid permit" means a permit issued under this Section that has not expired, that is not within a period of suspension or failure-to-reinstate status, and that has not been revoked under this Chapter or any provision of applicable law.

(f) A separate permit shall be required for each retail sales location regardless of whether or not a person owns or operates more than one retail sales location within the City.

(g) A penalty equal to 25 percent of the applicable permit fee shall be assessed and collected by the City or its permitting agent for permit fee renewal payments that are not received or postmarked by the first of January.

1727.04 PERMIT REVOCATION, DENIAL, OR SUSPENSION.

(a) Application for a permit may be denied for any of the following reasons:

(1) The permit application had a permit revoked within the previous three years;

(2) The permit applicant is determined to have knowingly included false or misleading information in the permit application or renewal permit application;

(3) The applicant's current permit has been suspended and the period of suspension has not elapsed;

(4) A business owned or operated by the permit applicant engaging in the sale of tobacco products within the City is the subject of a court order or a city resolution or final order declaring such business to be a public nuisance, where said nuisance has not been abated, or where a court has ordered the sales of tobacco products shall cease pursuant to any temporary restraining order preliminary injunction, or permanent injunction issued by said court;

(5) The permit applicant is in arrears with respect to any fine imposed for violation of this Chapter; or

(6) The permit applicant has failed to provide any of the items required under Subsection 1727.03(b).

(b) For purposes of Subsection (a) of this Section, "applicant" shall include entities with common ownership or management to the entity or natural person listed on the application.

(c) A permit may be suspended for a definite period, not to exceed six months, as determined by the City or its permitting agent. Prior to reinstatement of the permit following expiration of the suspension, the permittee shall remit a \$100.00 permit reinstatement administration fee. A permit may be suspended for any of the following reasons:

(1) A business owned and operated by the permit applicant engaging in the sale of tobacco products within the City is the subject of a court order or city resolution or final order declaring such business to be a public nuisance where said nuisance has not been abated, or where the court has ordered that sales of tobacco products shall cease pursuant to any temporary restraining order, preliminary injunction, or permanent injunction issued by said court;

(2) Substantiated evidence that permittee or agent of permittee has sold or otherwise distributed any tobacco product to any person under 21 within the City more than one time in the past 12 months;

(3) The finding by a federal or state agency or court that the permit applicant has violated a federal or state rule or regulation governing the sale of tobacco products;

(4) Entry of a City or its permitting agent pursuant to Section 1727.08 is refused for inspection, or investigation is refused, hindered, or thwarted; or

(5) The permittee is in arrears with respect to any fine imposed for any civil penalty levied under this Chapter.

(d) A permit may be revoked for any of the following reasons:

(1) The permit applicant is determined to have knowingly included false or misleading information in the permit application or renewal permit application.

(2) Substantiated evidence that permittee or agent of permittee has sold or otherwise distributed any tobacco product to any person under 21 within the City more than one time in the past 12 months;

(3) Entry of a City or its permitting agent pursuant to Section 1727.08 is refused, or inspection or investigation is refused, hindered or thwarted;

(4) A period of suspension imposed under Subsection (c) herein has elapsed and the permittee remains in arrears of payment of such fine or penalty; or

(5) The permittee has been subject to three or more suspensions in the previous 24-month period.

1727.05 NON-TRANSFERABILITY.

A permit is non-transferable. A new permit will be issued at no cost to the permittee who changes location. Any sale or transfer of ownership

of permittee's business will require a new application and subsequent permit issuance.

1727.06 NON-RETALIATION.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer reported violations of any provisions of this Chapter.

1727.07 POSTING OF SIGNS; EDUCATION; OUTREACH.

(a) Effective June 1, 2019, a sign stating "Under 21 Sales of Tobacco and Nicotine Products and Devices Prohibited by Law" and "Pursuant to Chapter 1727 of the Lakewood Codified Ordinances" shall be posted. The font for "Pursuant to Chapter 1727 of the Lakewood Codified Ordinances" shall be no smaller than one half of an inch in height. The font for "Under 21 Sales of Nicotine Products and Devices Prohibited by Law" shall be no smaller than one sixth of an inch in height. The sign shall be clearly and conspicuously posted at or near the point of sale of any location tobacco products and/or alternative nicotine products are sold.

(b) The City or its permitting agent shall collaborate with the community to prepare and distribute education materials, required signage to all vendors, hold education events, implementation and compliance with this Chapter. The City or its permitting agent shall make all reasonable efforts to conduct such education efforts within the first six months of the program and at regular intervals as necessary thereafter.

1727.08 ENFORCEMENT; APPEALS.

(a) The City and its permitting agent shall have authority to implement and enforce the provisions of this Chapter.

(b) The City or its permitting agent may conduct an inspection of a business prior to issuing a permit. The City or its permitting agent may annually inspect each business holding a permit upon proper identification and upon stating the purpose and necessity of an inspection. The City or its permitting agent may enter at reasonable times to inspect or investigate and examine or copy records to determine compliance with this Chapter. The City or its permitting agent may apply for and any judge of a court of record may issue an appropriate search warrant necessary to achieve the purpose of this Chapter within the court's territorial jurisdiction. If entry is refused or inspection or investigation is refused, hindered or thwarted after the City or its permitting agent receives permission or a warrant to inspect,

the City or its permitting agent may suspend or revoke the permit as set forth herein.

(c) In addition to the denial, suspension, or revocation of a permit, the City or its permitting agent may impose the following civil penalties for violations of this Chapter:

(1) For a first violation, written warnings shall be provided to violators.

(2) For a second violation within five years of the first violation, \$250.00.

(3) For a third violation within five years of the first violation, \$500.00.

(4) For a fourth violation within five years of the first violation, \$1,000.00.

(5) For a fifth violation within five years of the first violation, administrative permit review to determine if the permit should be suspended or revoked.

(d) When the City or its permitting agent determines to issue a civil penalty for a violation, to deny a permit application, or to suspend or revoke a permit, the City or permitting agent shall notify permittee of said determination by sending written notice of said determination by U.S. first-class mail to the address provided on the permit application.

(e) The City or its permitting agent shall not be required to conduct an evidentiary hearing prior to issuing a determination provided for in Subsection (d) herein.

(f) The permittee may file a written notice of appeal with the City Director of Law within 14 calendar days after the date the determination was mailed. The process to request said appeal shall be provided in the notice of the determination set forth in Subsection (d) herein. The determination shall take effect following the expiration of time to file the notice of appeal.

(g) An appeal hearing shall be heard by the Board of Building Standards and Building Appeals seated pursuant to Chapter 156, which shall follow the relevant hearing procedures established for appeals from orders of the Building Commissioner. The burden of proof by preponderance of the evidence shall be upon the City or its permitting agent. The hearing board shall be the final, administrative decision maker.

1727.09 INJUNCTION RELIEF.

(a) The provisions of Sections 1727.01 through 1727.08 are health ordinances applicable to real property in the City and may be enforced by civil action pursuant to the Revised Code.

(b) Repeated violations of this Chapter may constitute a public nuisance. The law director may bring a cause of action to abate such nuisance and enjoin the recurrence of such violations and for such other relief may be available at law or in equity.

1727.10 EFFECTIVE DATE.

Permits and other requirements set forth in this Chapter shall be effective as of March 1, 2019.

Section 2. Section 521.14, Sale of Tobacco and Alternate Nicotine Products to Minors Prohibited; Vending Machines, of the Codified Ordinances of the City of Lakewood, currently reading as follows:

521.14 SALE OF TOBACCO AND ALTERNATE NICOTINE PRODUCTS TO MINORS PROHIBITED; VENDING MACHINES.

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

(1) Give, sell, or otherwise distribute alternative nicotine products. cigarettes or other tobacco products to any person under eighteen years of age;

(2) Give away, sell, or distribute alternative nicotine products. cigarettes or other tobacco products in any place that does not have posted in a conspicuous place a sign stating giving, selling, or otherwise distributing alternative nicotine products. cigarettes or other tobacco products to a person under eighteen years of age is prohibited by law.

(b) No person shall sell or offer to sell alternative nicotine products, cigarettes or other tobacco 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 eighteen years are not generally permitted access;

(2) In any other place not identified in division (b)(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 alternative nicotine products, cigarettes and other tobacco product purchases from the vending machine will be readily observed by the person who owns or operates the place or any 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) As used in this section, "vending machine" has the same meaning as "coin machine" as defined in Section 2913.01 of the Revised Code.

(d) As used in this section:

(1) "Alternative nicotine products" 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.

(2) "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.

(3) "Alternative nicotine products" and "electronic cigarette" do not include any cigarette or other tobacco product: any product that is a "drug" as that term is defined in 21 U.S.C. 321 (g)(1); any product that is a "device" as that term is defined in 21 U.S.C. 32(h); or any product that is a "combination product" as described in 21 U.S.C. 353(g).

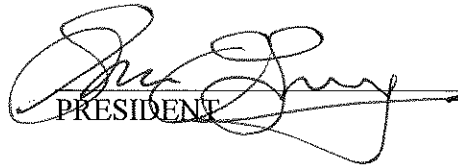
(e) Whoever violates this section is guilty of illegal distribution of alternative nicotine products, cigarettes or other tobacco products, a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of this section, then illegal distribution of alternative nicotine products, cigarettes or other tobacco products is a misdemeanor of the third degree.

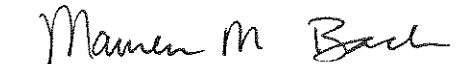
is hereby repealed.

Section 3. The Mayor may enter into an agreement with the District Advisory Council of the Cuyahoga County General Health District to serve as the permitting agent provided for under Chapter 1727, on such terms as are approved by the Director of Law.

Section 4. It is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council and that all such 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.

Adopted: 3/18/19


PRESIDENT


CLERK

Approved: 3-19-19


MAYOR