


MEMORANDUM

To: Members of Dublin City Council

CC: Dana L. McDaniel, City Manager 

From: Jennifer D Readler, Law Director
Thaddeus M Boggs

Date: November 16, 2017

Re: Ordinance 24-17 (Amended) - Amending the Dublin Codified Ordinances to Prohibit the Sale or Other Distribution of Cigarettes, Other Tobacco Products, or Alternative Nicotine Products to Persons Under 21 Years Old; to Require Licensure for the sale of Tobacco and Alternative Nicotine Products within the City of Dublin; and Authorizing the City Manager to Contract with Franklin County Public Health to Act as the City's Licensing Agent for Licensing Tobacco and Alternative Nicotine Product Retailers.

BACKGROUND

Ordinance 24-17, to prohibit the sale of tobacco to persons under the age of 21 in the City of Dublin, was introduced and received its first reading at Council's April 24, 2017, meeting. At earlier meetings, concerns were expressed from Council members regarding enforcement of the proposed age restriction. Similar concerns were raised by Rob Crane, M.D., of the Preventing Tobacco Addiction Foundation, who initially presented this issue to Council earlier in the year.

Council tabled Ordinance 24-17 at the second reading/public hearing on May 8, 2017 so that staff could explore additional enforcement measures for the proposed ordinance.

Because the ordinance is primarily a public health measure, the participants in these discussions (including the Chief of Police and Dr. Crane) have agreed that enforcement should focus on health and licensure components rather than criminal punishment. The emphasis has also been on holding businesses accountable, rather than individual clerks, although the City reserves the right to pursue liability against both. To explore effective enforcement options, the City Manager and Law Director met with representatives of other suburban municipalities and representatives from Franklin County Public Health (FCPH). Legal staff for the City and the attorney for FCPH, Joe Durham, have met multiple times to create a licensing and enforcement system.

SUMMARY OF REVISED ORDINANCE

The draft Ordinance presented to Council for this meeting is the product of the efforts made since the Ordinance was tabled. In addition to the revision of age-of-sale to 21, and criminal penalties, this revised Ordinance adds language creating a system of licensure for retail vendors

of tobacco and alternative nicotine products. In a previous memorandum to Council when this issue first arose, staff raised legal and practical concerns about a licensing system. During the course of discussions while the Ordinance was on the table, these concerns have been addressed. The scope of the licensing requirements in the revised Ordinance differs from the State's cigarette-vendor licensing, strengthening the City's home-rule position. Additionally, FCPH has offered to assume the administrative role for the licensing system. While the licensing system is a product of the City's code and its home-rule authority, it was drafted with the assumption that the City would delegate administrative responsibility to FCPH.

The draft Ordinance details the application process, licensing fees, and enforcement for the tobacco and alternative nicotine product license. All components may be delegated by the City to a licensing agent, which is proposed to be FCPH under the draft agreement attached to the Ordinance.

The licensing provisions include civil enforcement remedies, with civil penalties ranging from \$250 to \$500, and a fair, streamlined appeal process. Licenses may be suspended or revoked for certain violations of the laws or conditions of licensure, and the Law Director has remedy through injunction to enforce the licensing requirements.

Ordinance 24-17, as revised and now presented to Council, provides a plan for effective enforcement of a tobacco-21 law in the City. In addition to the ability to pursue criminal enforcement, this Ordinance's civil licensing enforcement provisions provide a straightforward civil process that is fair but does not require criminal prosecution.

Staff has provided notices to all of the affected tobacco retailers in Dublin of this legislation and the dates for Council consideration of Ordinance 24-17.

The effective dates in the Ordinance are staggered so that the City and FCPH can enter contract at the earliest opportunity. Then, the code provisions within the Ordinance, if passed, would become effective March 1, 2018, to allow time for FCPH to prepare for its administration of the licensing system and for businesses to become educated about the law. Section 7 of the Ordinance delays penalty for selling without a license until May 1, 2018, so that potential licensees have time to complete applications, and FCPH has time to review applications and issue the licenses, after the Code provisions become effective March 1.

CONCLUSION

In summary, Ordinance 24-17 (Amended) increases the age of sale for cigarettes, other tobacco products, and alternative nicotine products from 18 to 21; creates a licensing system for tobacco and alternative nicotine product retailers; and authorizes the City Manager to contract with FCPH to act as the City's licensing agent.

Based on the amendments proposed to Ordinance 24-17 subsequent to tabling on May 8, 2017, staff recommends that Council schedule an additional hearing and vote on Ordinance 24-17 as amended at the December 4, 2017 Council meeting.

RECORD OF ORDINANCES

Ordinance No. **24-17 (Amended)**

Passed _____, 20____

AN ORDINANCE AMENDING THE DUBLIN CODIFIED ORDINANCES TO PROHIBIT THE SALE OR OTHER DISTRIBUTION OF CIGARETTES, OTHER TOBACCO PRODUCTS, OR ALTERNATIVE NICOTINE PRODUCTS TO PERSONS UNDER 21 YEARS OLD; TO REQUIRE LICENSURE FOR THE SALE OF TOBACCO AND ALTERNATIVE NICOTINE PRODUCTS WITHIN THE CITY OF DUBLIN; AND TO AUTHORIZE THE CITY MANAGER TO CONTRACT WITH FRANKLIN COUNTY PUBLIC HEALTH TO ACT AS THE CITY'S AGENT FOR LICENSING TOBACCO AND ALTERNATIVE NICOTINE PRODUCT RETAILERS.

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, over 260 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, since 2015, eight municipalities in the State of Ohio 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 Dublin 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 Dublin; and

WHEREAS, representatives of the City have met with representatives of Franklin County Public Health and other Franklin County municipalities regarding opportunities for cooperation on effective enforcement of tobacco-to-21 ordinances; and

WHEREAS, the City of Dublin would be a leader in joining Franklin County Public Health to support a licensing program for the City of Dublin.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Dublin, Delaware, Franklin, and Union Counties, State of Ohio, _____ of the elected members concurring:

Section 1. That Section 135.17, Illegal Distribution of Cigarettes, Other Tobacco Products, or Alternative Nicotine Products; Transaction Scans, in the General Offenses Code, is hereby amended to read as follows:

§ 135.17 ILLEGAL DISTRIBUTION OF CIGARETTES, OTHER TOBACCO PRODUCTS, OR ALTERNATIVE NICOTINE PRODUCTS; TRANSACTION SCANS.

(A) *Illegal distribution of cigarettes, other tobacco products, or alternative nicotine products.*

(1) As used in this section:

AGE VERIFICATION. 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

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the purchaser is ~~18~~ 21 years of age or older.

ALTERNATIVE NICOTINE PRODUCT.

1. Subject to division 2. of this definition, 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. The phrase does not include any of the following:

- a. Any cigarette or other tobacco product;
- b. Any product that is a "drug" as that term is defined in 21 U.S.C. § 321(g)(1);
- c. Any product that is a "device" as that term is defined in 21 U.S.C. § 321(h);
- d. Any product that is a "combination product" as described in 21 U.S.C. § 353(g).

CHILD (includes CHILDREN). Has the same meaning as in R.C. § 2151.011.

CIGARETTE. Includes clove cigarettes and hand-rolled cigarettes.

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.

ELECTRONIC CIGARETTE .

1. Subject to division 2. of this definition, 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.

2. The phrase does not include any item, product, or device described in division 2. of the definition for "alternative nicotine product" in this section.

PERSON UNDER 21. For purposes of this section, means a natural person who has reached the age of 18 years but has not yet reached the age of 21 years.

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

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.

VENDING MACHINE. Has the same meaning as "coin machine" in R.C. § 2913.01.

(2) No manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, 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, 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. Each day that the required sign is not posted shall constitute a separate offense;

(c) Knowingly furnish any false information regarding the name, age, or other identification of any child or person under 21 with purpose to obtain cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes for that child or person under 21;

(d) Manufacture, sell, or distribute in this state any pack or other container

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of cigarettes containing fewer than 20 cigarettes or any package of roll-your-own tobacco containing less 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;

(f) Give, sell, or otherwise distribute 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;

(g) Give, sell, or otherwise distribute cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to any person under 21.

(3) No person shall sell or offer to sell cigarettes, 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 product, 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.

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) and (A)(2)(g) of this section:

(a) The child or person under 21 was accompanied by a parent, spouse who is 18 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 or to a person under 21 under division (A)(2)(g) of this section is a parent, spouse who is 18 years of age or older, or legal guardian of the child or person under 21.

(5) It is not a violation of division (A)(2)(a), ~~or (A)(2)(b)~~, or (A)(2)(g) of this section for a person to give or otherwise distribute to a child or person under 21 cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes while the child or person under 21 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, or the person under 21 has consented in writing on his or her own behalf.

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

(c) The child or person under 21 is participating in the research protocol at the facility or location specified in the research protocol.

(6) It is not a violation of (A)(2)(g) of this section to give a person under 21 cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes if the transfer is done in the course of the person under 21's employment and the person under 21 is not the end consumer of the cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes.

~~(6)(7)~~(a) Whoever violates division (A)(2)(a), (A)(2)(b), (A)(2)(d), (A)(2)(e), or (A)(2)(f) or (A)(3) of this section is guilty of illegal distribution of cigarettes,

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other tobacco products, or alternative nicotine products. Except as otherwise provided in this division, illegal distribution of cigarettes, other 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 (A)(2)(a), (A)(2)(b), (A)(2)(d), (A)(2)(e), or (A)(2)(f) or (A)(3) of this section or a substantially equivalent state law or municipal ordinance, illegal distribution of cigarettes, 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, other tobacco products, or alternative nicotine products. Except as otherwise provided in this division, permitting children to use cigarettes, other 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 (A)(2)(c) of this section or a substantially equivalent state law or municipal ordinance, permitting children to use cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the third degree.

(c) Whoever violates division (A)(2)(g) of this Section is guilty of illegal distribution of cigarettes, other tobacco products, or alternative nicotine products to a person under 21. Except as otherwise provided in this division, illegal distribution of cigarettes, other tobacco products, or alternative nicotine products to a person under 21 shall be a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of division (A)(2)(c) or (A)(2)(g) of this Section or a substantially equivalent state law or municipal ordinance, illegal distribution of cigarettes, other tobacco products, or alternative nicotine products to a person under 21 is a misdemeanor of the third degree.

(d) It is the purpose of this section to impose organizational liability, per Section 130.11 of the Codified Ordinances, for violation of division (A)(2)(g) of this Section. Such liability shall apply to the corporation, limited liability company, partnership, sole proprietorship, or other entity or natural person acting as the principal or employer to the agent or employee who actually sells, gives, or otherwise distributes cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to a person under 21. It shall be the policy of the City of Dublin to prefer citation on the organization selling, distributing, or otherwise giving cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to a person under 21. Provided, however, that this shall not preclude citation of an individual agent or employee for violation of division (A)(2)(g).

~~(7)~~(8) 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 section and that are used, possessed, purchased, or received by a child in violation of R.C. § 2151.87 are subject to seizure and forfeiture as contraband under R.C. Chapter 2981.

(B) *Transaction scan.*

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

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, other tobacco products, or alternative nicotine products from a seller, agent, or employee.

IDENTIFICATION CARD. Means an identification card issued under R.C. §§ 4507.50 through 4507.52.

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

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, other tobacco products, or alternative nicotine products.

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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, 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, 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, other tobacco products, or alternative nicotine products to the person presenting the document.

(3) Rules adopted by the Registrar of Motor Vehicles under 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 this code 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, 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 tobacco product or alternative nicotine product transaction scan, and the court may impose upon the offender a civil penalty of up to \$1,000 for each violation. The Clerk of the Court shall pay each collected civil penalty to the County Treasurer for deposit into the County Treasury.

(C) *Affirmative defenses.*

(1) A seller or an agent or employee of a seller may not be found guilty of a

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charge of a violation of division (A) of this section in which the age of the purchaser or other recipient of cigarettes, 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, 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, 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, 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 R.C. §§ 4507.50 through 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.

(D) *Shipment of tobacco products.*

(1) As used in this division (D):

AUTHORIZED RECIPIENT OF TOBACCO PRODUCTS means a person who is:

1. Licensed as a cigarette wholesale dealer under R.C. § 5743.15;
2. Licensed as a retail dealer as long as the person purchases cigarettes with the appropriate tax stamp affixed;
3. An export warehouse proprietor as defined in Section 5702 of the Internal Revenue Code;
4. An operator of a customs bonded warehouse under 19 U.S.C. § 1311 or 19 U.S.C. § 1555;
5. An officer, employee, or agent of the federal government or of this state acting in the person's official capacity;
6. A department, agency, instrumentality, or political subdivision of the federal government or of this state;
7. A person having a consent for consumer shipment issued by the Tax Commissioner under R.C. § 5743.71.

MOTOR CARRIER. Has the same meaning as in R.C. § 4923.01.

(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 R.C. § 1346.01, and to prevent the sale of cigarettes, alternative nicotine products, or other tobacco products to persons under 21.

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(3) (a) No person shall cause to be shipped any cigarettes, alternative nicotine products, or other tobacco products to any person in this municipality other than an authorized recipient of tobacco products.

(b) No motor carrier or other person shall knowingly transport cigarettes, alternative nicotine products, or other tobacco products to any person in this municipality that the carrier or other person reasonably believes is not an authorized recipient of tobacco products. If cigarettes, alternative nicotine products, or other tobacco products are transported to a home or residence, it shall be presumed that the motor carrier or other person knew that the person to whom the cigarettes, alternative nicotine products, or other tobacco products were delivered was not an authorized recipient of tobacco products.

(4) No person engaged in the business of selling cigarettes, alternative nicotine products, or other tobacco products who ships or causes to be shipped cigarettes, alternative nicotine products, or other tobacco products to any person in this municipality in any container or wrapping other than the original container or wrapping of the cigarettes, alternative nicotine products, or other tobacco products shall fail to plainly and visibly mark the exterior of the container or wrapping in which the cigarettes, alternative nicotine products, or other tobacco products are shipped with the words "cigarettes," or otherwise indicate that the container contains cigarettes, alternative nicotine products, or other tobacco products.

(5) A court shall impose a fine of up to \$1,000 for each violation of division (D)(3)(a), (D)(3)(b) or (D)(4) of this section.

(E) License Required

(1) No person shall engage in the retail sale of tobacco products or alternative nicotine products without a valid license issued pursuant to Sections 94.20 through 94.22 of the Codified Ordinances.

(2) Violation of this provision is a misdemeanor of the first degree.

Section 2. That Chapter 94, Health and Sanitation, shall be amended by adding Sections 94.20 through 94.24, to read as follows:

§ 94.20 DEFINITIONS.

As used in Sections 94.20 through 94.24:

(A) ALTERNATIVE NICOTINE PRODUCT.

(1) Subject to division (2) of this definition, 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) The phrase does not include any of the following:

(a) Any cigarette or other tobacco product;

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

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

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

(B) CHILD (includes CHILDREN). Has the same meaning as in 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.

(1) Subject to division 2. of this definition, 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.

(2) The phrase does not include any item, product, or device described in division 2. of the definition for "alternative nicotine product" in this section.

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- (F) **LICENSING AGENT.** Means the entity with which the City of Dublin has contracted to administer license applications and enforcement of provisions contained in Sections 94.21 through 94.23.
- (G) **PERSON UNDER 21.** Means a natural person who has reached the age of 18 years but has not yet reached the age of 21 years.
- (H) **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.

§94.21 **LICENSE REQUIRED**

- (A) No person shall engage in retail sales of tobacco products or alternative nicotine devices within the City without a valid license issued by the City, or on the City's behalf, to sell tobacco products or alternative nicotine devices.
- (B) No licensee shall engage in retail sales of tobacco products or alternative nicotine devices in violation of Section 135.17 of the Codified Ordinances, or any substantially equivalent provision of applicable law.
- (C) The following items shall be required in applying for a license, or renewing a license, under this Section:
- (1) A valid vendor's license from the Ohio Department of Taxation;
 - (2) If the applicant engages in retail sale of cigarettes, a valid Retail Cigarette Dealer's License as required by Chapter 5743 of the Ohio Revised Code;
 - (3) The location where the applicant proposes to engage in retail sales of tobacco products or alternative nicotine devices.
 - (4) A nonrefundable license administration fee of \$150.
 - (5) Such other information as determined, by the City Manager or the City's licensing agent, to be necessary to administer the licensing system provided herein and effectuate the purposes of Sections 94.20 through 94.24, and Section 135.17.
- (D) A license granted under this Section shall be valid from June 1 of the year of application to May 31 of the following year. A license issued to a new licensee after January 1 shall be valid until May 31 of the following year.
- (E) License administration fees, reinstatement fees, and civil penalties collected in administering Sections 94.20 through 94.23 may be collected by the City or the City's licensing agent, and shall be credited to the City's General Fund to defray the costs of administration and enforcement of these sections; alternatively, the City and its licensing agent may agree that the licensing agent will retain all or a portion of the fees as compensation for its services as licensing agent.
- (F) For purposes of this section, "valid license" means a license 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.

§94.22 **LICENSE REVOCATION, DENIAL, OR SUSPENSION**

- (A) Application for a license required under Section 94.21 may be denied for any of the following reasons:
- (1) The applicant has had a license under Section 94.21 revoked within the previous three (3) years;
 - (2) The applicant is determined to have knowingly included false or misleading information in the license application or renewal application.
 - (3) The applicant's current license under Section 94.21 has been suspended, and the period of suspension has not elapsed;
 - (4) A property owned or operated by the applicant engaging in the retail sale of cigarettes, tobacco products, or alternative nicotine products within the City of Dublin is the subject of a court order declaring such property to be a public nuisance, where said nuisance has not been abated as determined by the court, or where the court has ordered that retail sales of tobacco products or alternative nicotine products shall cease pursuant to any temporary restraining order, preliminary injunction, or permanent injunction issued by the court;

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apply for, and any judge of a court of record may issue, an appropriate search warrant necessary to achieve the purposes of this Chapter within the court's territorial jurisdiction. If entry is refused or inspection or investigation is refused, hindered, or thwarted, the City or its licensing agent may suspend or revoke the license.

(B) For purposes of divisions (C)(1) and (D)(2) of Section 94.22:

(1) "Violation," including violation of Section 135.17 or a substantially equivalent offense, does not require that the person has been criminally convicted of the violation of Section 135.17 or substantially equivalent offense. The City or its licensing agent may determine that a violation has occurred even if no criminal charge has been filed. Acquittal or dismissal of a charge under Section 135.17, or any substantially equivalent offense, shall not necessarily absolve a licensee; Sections 94.20 through 94.24 are civil in nature, and so the City or its licensing agent may find a violation based upon a preponderance of evidence, rather than proof beyond a reasonable doubt, and are not otherwise required to observe rules of criminal procedure, the exclusionary rule, or confrontation of witnesses;

(2) Sale of multiple items in violation of Section 135.17, or substantially equivalent applicable law, where the sales occur in a single transaction, shall constitute one violation. For example: sale of three packs of cigarettes and a vial of liquid nicotine to a nineteen-year old in one transaction shall constitute one violation. Sale of one pack of cigarettes to one nineteen-year old, and one pack of cigarettes to the eighteen-year old next in line, in two transactions, shall constitute two violations.

(C) In addition to the denial, suspension, or revocation of a license, the City or its licensing agent may impose the following civil penalties for violations of Sections 94.21 or 94.22, or of Section 135.17 or any substantially equivalent offense:

(1) For a first violation, \$250.00;

(2) For second and additional violations within one year of the first violation, \$500.00.

(D) When the City or its licensing 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 licensing agent shall notify the violator, applicant, or licensee written notice of said decision by U.S. mail, electronic mail, by posting in a conspicuous place at the location, or other means reasonably calculated to promptly notify the violator, applicant, or licensee of the determination.

(E) The City or its licensing agent shall not be required to conduct an evidentiary hearing prior to issuing a determination provided for in division (D) of this Section.

(F) The violator, applicant, or licensee may file a written notice of appeal with the City or its licensing agent, whichever issued the determination, within fourteen (14) days of the date of the determination provided pursuant to division (D) of this Section. The determination shall take effect following the expiration of time to file the notice of appeal provided herein.

(G) If the City's licensing agent is Franklin County Public Health, the appeal provided in division (F) of this Section shall be heard by the Board of Health, or the City. The Board of Health may designate a hearing officer to hear and decide the appeal on its behalf. If Franklin County Public Health is not the City's licensing agent, the appeal shall be to Council. The Mayor may designate a hearing officer to hear and decide the appeal on Council's behalf.

(H) In any appeal hearing under this Section, the burden of proof by preponderance of the evidence shall be upon the City or its licensing agent. The hearing shall be recorded and exhibits marked to create a record for use in further appeal provided, however, that transcripts need not be ordered unless a notice of appeal to the court of common pleas or Franklin County Municipal Court Environmental Division has been timely filed under Chapter 2506 of the Ohio Revised Code.

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- (I) The Board of Health or its Health Commissioner, Council, or a hearing officer hearing an appeal under this Section shall rule on all preliminary and evidentiary matters, and in doing so shall not be strictly bound by the Rules of Evidence, the Rules of Civil Procedure, or the Rules of Appellate Procedure. The presiding officer of the Board of Health, the Health Commissioner, the Mayor, or the hearing officer may establish time limits for the presentation of evidence, determine any non-dispositive preliminary motion, and may continue any hearing on the motion of a party or on its own motion.
- (J) Appeals from decisions under division (I) of this Section shall proceed according to Chapter 2506 of the Ohio Revised Code.

§94.24 **INJUNCTIVE RELIEF**

- (A) The provisions of Sections 94.20 through 94.22, and of Section 135.17, are health ordinances applicable to real property in the City of Dublin, and may be enforced by civil action pursuant to Sections 1901.181 and 1901.183 of the Ohio Revised Code.
- (B) Violations of the provisions of Sections 94.20 through 94.22, and of Section 135.17, are hereby found to be public nuisances, and the Law Director may bring a cause of action to abate such violations and enjoin their recurrence, and for such other relief may be available at law or in equity.

Section 3. The City Manager is hereby authorized to contract with Franklin County Public Health to act as its licensing agent provided in Section 2 of this Ordinance, such contract to be in substantially the same form as that attached and labeled as Exhibit A.

Section 4. The provisions of this Ordinance are severable, and if any is found to be invalid for any reason by a court of competent jurisdiction then the remainder shall remain in full force and effect.

Section 5. The Council finds that all deliberations and actions of the public body relating to this Ordinance were taken in an open meeting in compliance with Section 121.22 of the Ohio Revised Code.

Section 6. This Ordinance shall take effect at the earliest date provided by law, except that Sections 1 and 2 shall not take effect until March 1, 2018.

Section 7. No person shall be cited, be the subject of a violation determination, or otherwise be penalized or prosecuted under C.O. §94.21(A) for conduct occurring before May 1, 2018.

Passed this _____ day of _____, 2017.

Mayor – Presiding Officer

ATTEST:

Clerk of Council

**FRANKLIN COUNTY PUBLIC HEALTH
2018 CONTRACT**

Between:

The Board of Health
of the Franklin County General Health District
280 East Broad Street
Columbus, Oh 43215

and

The City of Dublin, Ohio
5200 Emerald Parkway
Dublin, OH 43017

Contact us at: (614) 525-3160 / Fax (614) 525-6672
www.myfcph.org

CONTRACT

BETWEEN THE CITY OF DUBLIN, OHIO AND FRANKLIN COUNTY PUBLIC HEALTH

This contract is made and entered into by and between the City of Dublin, Ohio, a municipal corporation constituting a city health district, and the Board of Health of the Franklin County General Health District ("Franklin County Public Health") pursuant to Ohio Revised Code Section 3709.281.

WITNESSETH

SECTION 1. Franklin County Public Health shall, for the consideration hereinafter stated, furnish to the City of Dublin, Ohio, and inhabitants thereof, services as the licensing agent, as defined in Dublin Codified Ordinance, Chapter 94, Health and Sanitation, section 94.20(F).

The Law Director of Dublin, Ohio shall be responsible for any litigation involving enforcement of the City Ordinance within the corporate limits of said political subdivision.

This Agreement and any claims arising in any way out of this Agreement shall be governed by the laws of the State of Ohio. Any litigation arising out of or relating in any way to this Agreement or the performance hereunder shall be brought only in an Ohio court of competent jurisdiction in Franklin County, Ohio, and the City of Dublin hereby irrevocably consents to such jurisdiction.

SECTION 2. Said services shall be furnished beginning January 1, 2018 and ending December 31, 2018 provided, however, that either party to this agreement shall have the right to cancel the same upon four (4) months written notice and the parties hereto may, by mutual written agreement, modify the terms of this agreement. This Agreement shall automatically renew for successive one (1) year terms unless notice of intent to terminate is delivered in accord with this section.

SECTION 3. Franklin County Public Health shall issue licenses and collect fees for the retail sales of tobacco products or alternative nicotine devices. The fee to be charged shall be the most current fee adopted by the City of Dublin, Ohio. The fee shall be collected by Franklin County Public Health and that shall be its sole source of compensation for services rendered under this Agreement.

SECTION 4. This contract is approved by a majority of the members of the legislative authority of the City of Dublin, pursuant to the provisions of Ordinance _____ dated _____.

FINANCIAL CERTIFICATE

It is hereby certified that the amount required to meet the contract agreement, obligation, payment of expenditure for the above has been lawfully appropriated, authorized or directed for such purpose and is in the treasury or in the process of collection to the credit of the proper fund and is free from any obligation or certificated now outstanding.

Angel L. Mumma
Finance Director
City of Dublin, Ohio

DATE

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