



## City of Powell, Ohio

ORDINANCE 2017-24  
Adopted June 20, 2017

### **AN ORDINANCE TO AMEND THE POWELL CODIFIED ORDINANCES TO PROHIBIT THE SALE OR OTHER DISTRIBUTION OF CIGARETTES, OTHER TOBACCO PRODUCTS, OR ALTERNATIVE NICOTINE PRODUCTS TO PERSONS UNDER 21 YEARS OLD.**

**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 200 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, six 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 Powell 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 Powell;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF POWELL, DELAWARE COUNTY, OHIO, AS FOLLOWS:**

**Section 1.** That Section 537.16, Illegal Distribution of Cigarettes, Other Tobacco Products, or Alternative Nicotine Products, in the General Offenses Code, is hereby amended to read as follows:

#### **§ 537.16 ILLEGAL DISTRIBUTION OF CIGARETTES, OTHER TOBACCO PRODUCTS, OR ALTERNATIVE NICOTINE PRODUCTS.**

(a) As used in this section:

(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) A. "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)(1);
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(g).

(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) A. "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.

(b) 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:

(1) Give, sell or otherwise distribute cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to any child;

(2) 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

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tobacco products, 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, 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 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 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, alternative nicotine products, or papers used to roll cigarettes to any person under twenty-one.

(c) 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:

(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 (c)(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 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.

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

(d) The following are affirmative defenses to a charge under subsection (b)(1) or (b)(7) of this section:

(1) The child or person under twenty-one was accompanied by a parent, spouse who is eighteen years of age or older, or legal guardian of the child.

(2) The person who gave, sold or distributed cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to a child or to a person under twenty-one under division (b)(7) of this section under subsection (b)(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 under division (b)(7) of this section.

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(e) It is not a violation of subsection (b)(1), (b)(2), or (b)(7) of this section for a person to give or otherwise distribute to a child or person under twenty-one cigarettes, other tobacco products, 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;
- (3) The child or person under twenty-one is participating in the research protocol at the facility or location specified in the research protocol.

(f) It is not a violation of (b)(7) of this section to give a person under twenty-one 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 twenty-one's employment and the person under twenty-one is not the end consumer of the cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes.

(g) (1) Whoever violates subsection (b)(1), (2), (4), (5) or (6) or (c) of this section is guilty of illegal distribution of cigarettes, other tobacco products, or alternative nicotine products. Except as otherwise provided in this subsection, 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 subsection (b)(1), (2), (4), (5) or (6) or (c) of this section, illegal distribution of cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the third degree.

(2) Whoever violates subsection (b)(3) of this section is guilty of permitting children to use cigarettes, other tobacco products, or alternative nicotine products. Except as otherwise provided in this subsection, 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 subsection (b)(3) of this section, permitting children to use cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the third degree.

(3) Whoever violates division (b)(7) of this section is guilty of illegal distribution of cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to a person under twenty-one. Except as otherwise provided in this division, illegal distribution of cigarettes, other tobacco products, or alternative nicotine products to a person under twenty-one shall be an unclassified misdemeanor, punishable by a fine up to five hundred dollars (\$500). If the offender previously has been convicted of a violation of any division of this section, or a substantially equivalent offense, then violation of division (b)(7) of this section shall be an unclassified misdemeanor punishable by a fine of no less than three hundred dollars (\$300), which shall not be suspended, and up to seven hundred fifty dollars (\$750). If the offender has two or more previous convictions under this section, or for any substantially equivalent offense, then a violation of division (b)(7) shall be an unclassified misdemeanor punishable by a fine of no less than seven hundred fifty dollars (\$750), which shall not be suspended, and up to one thousand dollars (\$1,000).

(4) It is the purpose of this section to impose organizational liability for violation of division (b)(7) of this section. Such liability shall apply to the corporation, limited liability company,

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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 twenty-one. It shall be the policy of the City of Powell to prefer citation of the organization selling, distributing, or otherwise giving cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to a person under twenty-one. Provided, however, that this shall not preclude citation of an individual agent or employee for violation of division (b)(7).


(h) 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 Ohio R.C. 2151.87 are subject to seizure and forfeiture as contraband under Ohio R.C. Chapter 2981.

**Section 2.** That the provisions of this Ordinance and Section 537.16 of the Powell Codified Ordinances 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 3.** 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 4.** That this Ordinance shall take effect at the earliest date provided by law.

VOTE ON ORDINANCE 2017-24:      Y   7                        N   0  

  
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Brian Lorenz  
Mayor

6/23/17            6/24/2017  
\_\_\_\_\_  
Date                      Karen Mitchell                      Date  
City Clerk

EFFECTIVE DATE: July 19, 2017

  
The legislation has been posted in accordance with  
the City Charter on this date 6/27/2017.  
\_\_\_\_\_  
City Clerk