

ORDINANCE NO. 2023-049

**AN ORDINANCE ADOPTING CHAPTER 773 OF THE KENT CODIFIED ORDINANCES TO ESTABLISH TOBACCO RETAILER DENSITY AND PROXIMITY PROVISIONS, 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**, studies have shown that tobacco use rates are affected by where tobacco retailers are located and how concentrated, or dense, they are in a given area; and

**WHEREAS**, studies have shown that increased availability of tobacco products is associated with increases in both youth and adult smoking rates.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Kent, Portage County, Ohio:

**SECTION 1.** That Kent City Council hereby authorizes the City Manager, or his designee, to establish the Tobacco Retailer Density and proximity provisions per the attached Exhibit "A", attached hereto and made a part hereof.

**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: August 16, 2023  
Date


EFFECTIVE: August 16, 2023  
Date

ATTEST: Amy Wilkens  
Amy Wilkens, CMC  
Clerk of Council

Jerry T. Fjala  
Mayor and President of Council

I, AMY WILKENS, 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.* 2023-049, ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON August 16, 2023.

(SEAL)

  
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AMY WILKENS, CMC  
CLERK OF COUNCIL

## EXHIBIT "A"

### **773.01 Definitions.**

- (1) "Youth Facility" means any agency, organization, or school whose main purpose is directed at programming, care, activities, or education for those under 18 years of age. (for example childcare centers, recreation center, private and public schools).
- (2) "Business" means any facility that currently requires a tobacco license to sell these products.
- (3) "Retail Establishment" means any place of business where licensed products are available for sale to the general public. Retail Establishment includes but is not limited to grocery stores, tobacco products shops, convenience stores, liquor stores, gasoline service stations, bars, restaurants and establishment where licensed products are consumed on the premises, such as hookah bars.
- (4) "Sale" means any transfer of goods for money, trade, barter or other consideration.
- (5) "Person" means any natural person.

### **773.02 Tobacco Retailer Density**

- (a) The total number of tobacco retailer licenses within the City of Kent shall be limited to one for each 1,300 people, or fraction thereof, inhabitants of the City of Kent, making a limit of 20 operating tobacco retailers.
- (b) For the purposes of this section, the total population of the City of Kent shall be determined by the most current published total available from the U.S. Census Bureau as of the date the license application is filed.
- (c) No new tobacco retail license shall be issued, nor an existing license transferred to another owner/lessee upon sale or change in business ownership if the existing number of tobacco retailer licenses equals or exceeds the total number of authorized tobacco retail licenses pursuant to this Section 773.02.
- (d) Notwithstanding subsections 772.01 (a) and (c), a tobacco retailer operating lawfully on the date this ordinance is adopted that would otherwise be eligible for a tobacco retailer license for the location for which a license is sought may receive or renew a license for that location so long as all of the following conditions are met:
  1. the license is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension); and
  2. the tobacco retail establishment is not closed for business or otherwise suspends tobacco sales, whether voluntarily or due to license suspension for more than sixty (60) consecutive days; and

3. the tobacco retailer does not substantially change the business premises or business operation. A substantial change to the business operation includes, but is not limited to, the transferring of a location:
  - a. to a new Proprietor(s) in an Arm's Length Transaction; or
  - b. for which a significant purpose is avoiding the effect of violations of this ordinance; and
  - c. the tobacco retailer retains the right to operate under other applicable laws.
4. If the City of Kent determines that a tobacco retailer has substantially changed the business premises or operation and the tobacco retailer disputes this determination, the tobacco retailer bears the burden of proving by a preponderance of evidence that such change(s) do not constitute a substantial change.

#### **773.03 Proximity of Tobacco Retail Establishments to Youth-Oriented Facilities**

No license shall be granted to any person or entity for a tobacco retail establishment location that is within 1,000 feet of a youth-oriented facility, as measured by the shortest line from the property line of the space to be occupied by the proposed tobacco retail licensee to the nearest property line of a youth-oriented facility. This restriction does not apply to an existing tobacco retailer holding a current state tax license for the sale of tobacco products in that same location for at least one year before the date this section was enacted into law.

#### **773.04 Proximity to Other Licensed Tobacco Retailers.**

No tobacco retail license will be granted to a tobacco retailer for a tobacco retail establishment location that is within 1,000 feet of any other existing licensed tobacco retail establishment, as measured by the shortest line from the property line of the space to be occupied by the applicant for a license to the nearest property line of the existing licensee. This restriction does not apply to an applicant that holds a state tax license to sell tobacco products in the same location for at least one year before the date this section was enacted into law.