

ORDINANCE NO. 2022-071

AN ORDINANCE ADOPTING CHAPTER 771 OF THE KENT CODIFIED ORDINANCES TO ESTABLISH THE TOBACCO PRODUCTS SALES LICENSING PROGRAM, AND DECLARING AN EMERGENCY.

WHEREAS, after decades of decline in cigarette smoking rates we have seen a recent dramatic rise in the use of e-cigarettes by children and teens leading to a new generation of tobacco products addicting a new generation of users to tobacco and nicotine; and

WHEREAS, 90 percent of smokers first try a tobacco product by age 18; and

WHEREAS, the Kent Board of Health desires to ensure proper training and enforcement of the restrictions on the sales of nicotine-containing products to those under the age of 21; and

WHEREAS, the City of Cincinnati and other communities have established similar licensing programs for the sale of tobacco and related products

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

SECTION 1. That Chapter 771 of the Kent Codified Ordinances, entitled "TOBACCO PRODUCT SALES" is hereby adopted to read as follows:

**Chapter 771
Tobacco Product Sales**

771.01. Definitions.

(a) As used in this chapter:

(1) "Compliance Check." Means the system the city uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this ordinance. Compliance checks involve the use of persons under the age of 21 who purchase or attempt to purchase licensed products. Compliance checks may also be conducted by the city or other units of government for educational, research, and training purposes or for investigating or enforcing federal, state, or local laws and regulations relating to licensed products.

(2) "Delivery Sale" means the sale of any licensed product to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the counter sales transaction in a licensed retail establishment. Delivery sale includes but is not limited to the sale of any licensed product when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. Delivery sale includes delivery by licensees or third parties by any means, including curbside pick-up.

(3) "Electronic smoking device" means any device that can be used to deliver aerosolized or vaporized nicotine or any other substance to the person inhaling from the device including an electronic cigarette, electronic cigar, electronic hookah, vaping pen,

or electronic pipe. The phrase includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. The phrase does not include any product that is a drug, device, or combination product, as those terms are defined or described in 21 U.S.C. 321 and 353(g).

(4) "Licensed Products" means the term that collectively refers to any tobacco product.

(5) "Movable Place of Business" means any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and that is not a fixed address or other permanent type of structure licensed for over-the-counter sales transactions.

(6) "Person" means any natural person.

(7) "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.

(8) "Sale" means any transfer of goods for money, trade, barter or other consideration.

(9) "Self-Service Display" means the open display of licensed products in a retail establishment in any manner where any person has access to the licensed products without the assistance or intervention of the licensee or the licensee's employee and where a physical exchange of the licensed product from the licensee or the licensee's employee to the customer is not required in order to access the licensed products.

(10) "Tobacco Product" means any product that is made or derived from tobacco or that contains any form of nicotine, if it is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means, including, but not limited to, a cigarette, an electronic smoking device, a cigar, pipe tobacco, chewing tobacco, snuff, or snus. The phrase also means any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, blunt or hemp wraps, and liquids used in electronic smoking devices, whether or not they contain nicotine. The phrase does not include any product that is a drug, device, or combination product, as those terms are defined or described in 21 U.S.C. 321 and 353(g).

(11) "Vending Machine" means any mechanical, electric or electronic, or other type of device that dispenses licensed products upon the insertion of money, tokens, or other form of payment into or onto the device by the person seeking to purchase the licensed product.

771.02. License Required; Application.

(a) License required. No retail establishment shall sell or offer to sell any licensed product without first having obtained a license from the Health Commissioner or their authorized designee.

(b) Application. An application for a license to sell licensed products must be made on a form provided by the Kent City Health Department. The application must contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the city deems necessary. If the Health Commissioner determines that an application is incomplete, it will be returned to the applicant with notice of the information necessary to make the application complete.

(c) Term. The license term is one calendar year, beginning on March 1. In cases of applications for a new license submitted after March 1 of a given year and more than 60 days before the following March 1, the Health Commissioner may issue a license for the remainder of the standard term period, but such license term will only extend to the following last day of February.

(d) Revocation or suspension. Any license issued may be suspended or revoked following the procedures set forth in this Chapter. A violation of other federal, state or local laws relating to tobacco sales shall be considered in determining such revocation or suspension.

(e) Transfers. All licenses issued are valid only on the premises for which the license was issued and only for the person to whom the license was issued. The transfer of any license to another location or person is prohibited.

(f) Display. All licenses must be posted and displayed at all times in plain view of the general public in the retail establishment.

(g) Renewals. The renewal of a license issued under this ordinance shall be handled in the same manner as the original application. The request for a renewal must be made at least 30 days, but no more than 60 days, before the expiration of the current license on the last day of February.

(h) Issuance as privilege and not a right. The issuance of a license is a privilege and does not entitle the license holder to an automatic renewal of the license.

(i) Instructional program. Licensees must complete and ensure that all employees complete a training program on the legal requirements related to the sale of licensed products and the possible consequences of license violations. Any training program must be pre-approved by the Kent Health Commissioner and shall include information that the sale tobacco products to persons under 21 years of age is illegal, the types of identification legally acceptable for proof of age, and that sales to persons under 21 years of age shall subject the tobacco retailer to penalties. Licensees must maintain documentation demonstrating their compliance and must provide this documentation to the city at the time of renewal, or whenever requested to do so during the license term.

(j) Samples prohibited. No person shall distribute samples of any licensed product free of charge or at a nominal cost, regardless of the age of the person acquiring the sample. The distribution of licensed products as a free donation is prohibited.

771.03 Basis for Denial of License.

(a) Grounds for denying the issuance or renewal of a license include, but are not limited to, the following:

- (1) The applicant is under 21 years of age.
- (2) The applicant has been convicted within the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to licensed products.
- (3) The applicant has had a license to sell licensed products suspended or revoked within the preceding 12 months of the date of application.
- (4) The applicant fails to provide the information required on the licensing application or provides false or misleading information.
- (5) The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a license.
- (6) The business for which the license is requested is a moveable place of business. Only fixed-location retail establishments are eligible to be licensed.

(b) If a license is mistakenly issued or renewed to a person, the Kent Health Commissioner may revoke the license upon the discovery that the person was ineligible for the license under this ordinance. The Kent Health Commissioner will provide the license holder with notice of the revocation, along with information on the right to appeal.

771.04 Fees. No license shall be issued under this ordinance until the appropriate license fees are paid in full. No license shall be renewed if the retail establishment has outstanding fines pursuant to this ordinance. The fee for a license or renewal shall be \$400.00.

771.05 Prohibited Sales.

(a) No person shall sell or offer to sell any licensed product by means of delivery sales. All sales of licensed products must be conducted in person, in a licensed retail establishment, in over-the-counter sales transactions.

(b) Legal age. No person shall sell any licensed product to any person under the age of 21.

- (1) Age verification. Licensees must verify by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is at least 21 years of age. Verification is not required for a person over the age of

30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.

(2) Signage. Notice of the legal sales age, age verification requirement, and possible penalties for underage sales must be posted within 6 feet of each cash register or place where payment may be made in a place conspicuous to both employees and customers and where the sign(s) are unobstructed in their entirety. The sign shall state, "The sale or provision of tobacco products to an individual under 21 years of age is prohibited by law." The sign required shall be 5 ½ inches by 8 ½ inches and the statement required shall be printed in 36-point boldfaced type. The required signage, which will be provided to the licensee by the Kent Health Commissioner.

(c) No person shall sell or offer to sell any licensed product in any manner or form prohibited by federal, state, or other local law, ordinance provision, or other regulation.

(d) Any retail establishment found to be selling licensed product without a license required under 771.02 shall be issued a No Sales Order for Tobacco Products and be ineligible to receive a retail establishment license for a period of three (3) years.

771.06 Compliance Checks and Inspections. All licensed premises must be open to inspection by Kent City Health Department inspectors or other authorized designees during regular business hours. The retail establishment shall be subject to two the compliance checks per year by the Kent City Health Department Inspectors. Compliance checks may include the participation of a person at least 18 years of age, but under the age of 21, to enter the licensed premises to attempt to purchase licensed products. Unannounced follow-up compliance checks of all non-compliant retail establishments are required within three months of any violation of this ordinance. The results of all compliance checks shall be published by the Kent City Health Department at least annually and made available to the public upon request.

771.07 Exceptions and Defenses. It is an affirmative defense to a violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

771.08 Appeals. If the Kent Health Commissioner denies the issuance of a license, or suspends or revokes a license, or issues a citation with or without civil penalty for violating this Chapter, the Health Commissioner shall send to the applicant, or licensee, by certified mail, return receipt requested, written notice of the action and the right to an appeal. Upon receipt of written notice of the denial, suspension, or revocation, the licensee subject to license denial or revocation or citation and civil fine shall have the right to appeal to the Board of Health. An appeal must be filed within thirty (30) days after the receipt of notice of the decision. The appellant shall bear the burden of proof.

771.99 Violations and Civil Penalties.

(a) Any retail establishment cited for violating this ordinance of the Kent Codified Ordinances, or whose employee has violated this ordinance of the Kent Codified Ordinances, the retail establishment will be charged a civil fine of \$300 for a first violation. A second violation at the same retail establishment licensed premises within a 36-month period will result in a penalty of \$600, and the Kent Health Commissioner shall suspend the retail establishment licensee's license for a period of not less than 30 and not more

than 60 consecutive days. A third violation at the same retail establishment's licensed premises within a 36-month period will result in a penalty of \$1,000, and the Kent Health Commissioner shall suspend of the retail establishment's license for a period of not less than 30 consecutive days, and in the exercise of their discretion, the Kent Health Commissioner may revoke the retail establishment's license. Upon a fourth violation within a 36-month period, the retail establishment's license will be revoked.

(b) License fees and civil fines collected under this Chapter shall be used to fund tobacco retail licensure compliance and enforcement measures. Such funds may also be designated for other tobacco control, prevention, and education programs as determined by the Kent City Health Department.

SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the residents of this City, for which reason and other reasons manifest to this Council this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: July 20, 2022
Date

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

EFFECTIVE: July 20, 2022
Date

ATTEST: Amy Wilkens
Amy Wilkens
Clerk 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. 2022-071, ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON July 20, 20 22.

(SEAL)

Amy Wilkens
AMY WILKENS
CLERK OF COUNCIL