

ORDINANCE NO. 2019-09

INTRODUCED BY: COUNCILWOMAN MICHELE WEISS

AN ORDINANCE, AS AMENDED, ENACTING CODIFIED ORDINANCE CHAPTER 874 ENTITLED “CIGARETTE AND TOBACCO VENDORS; SALES TO PERSONS UNDER 21,” ENACTING CODIFIED ORDINANCE SECTION 614 ENTITLED “TOBACCO PRODUCTS,” AND AMENDING CODIFIED ORDINANCE CHAPTER 1650 ENTITLED “SMOKING IN PUBLIC PLACES.”

WHEREAS, tobacco use is the foremost preventable cause of premature death in the United States, responsible for nearly half a million deaths per year in the United States and costing the nation approximately \$300 billion in healthcare and lost worker productivity costs each year;

WHEREAS, if smoking continues at the current rate among youth in the United States, 5.6 million of today’s Americans under the age of 18 will die early from a smoking-related illness;

WHEREAS, ninety-five percent (95%) of all adult smokers begin smoking before they turn twenty-one (21) years old, and adolescence is a critical period when many smokers move from experimental smoking to the regular, daily use;

WHEREAS, there is strong evidence that people who begin smoking at an early age are more likely to develop a severe addiction to nicotine than those who start at a later age;

WHEREAS, electronic nicotine delivery system use among minors has recently tripled, and use of these systems is associated with and may encourage the use of conventional tobacco products;

WHEREAS, data from the Cuyahoga County Youth Risk Behavior Survey in 2017 indicates that over thirty-five percent (35%) of students in Cuyahoga County reported having used an electronic vapor product and over fifteen percent (15%) of students in Cuyahoga County reported current use of an electronic vapor product;

WHEREAS, raising the minimum legal sales age for all tobacco products to twenty-one (21) will reduce access to these products by youth, as youth often acquire such products from older friends: over eighty percent (80%) of people purchasing tobacco for minors are between eighteen (18) and twenty (20) years old;

WHEREAS, over three hundred thirty (330) communities and six (6) states have enacted Tobacco 21 policies, covering over twenty-five percent (25%) of the nation’s population; and

WHEREAS, raising the age for tobacco sales to 21 and over in the City of University Heights would lessen accessibility of tobacco to minors and would assist the City’s interest in furthering the health, safety, and general welfare of the City’s residents;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF UNIVERSITY HEIGHTS, OHIO THAT:

Section 1. Chapter 874, entitled “Cigarette and Tobacco Vendors; Sales to Persons Under 21,” of the Codified Ordinances of the City of University Heights shall be, and is hereby, enacted and adopted in its entirety to read as set forth in Exhibit A hereto, a copy of which is attached and which is incorporated herein by reference as if fully rewritten. A complete copy of Exhibit A is also on file with the Clerk of Council.

Section 2. The City hereby authorizes the Mayor to appoint the Cuyahoga County Board of Health as its agent to administer certain terms and conditions of Codified Ordinance Chapter 874, including administration of the permitting process, assessment of fines, identification of vendors, education and community outreach, provision of applicable signage, annual inspections and other related matters that may arise in administration of Chapter 874.

Section 3. Chapter 614, entitled "Tobacco Products" of the Codified Ordinances of the City of University Heights shall be, and is hereby, enacted and adopted in its entirety to read as set forth in Exhibit B hereto, a copy of which is attached and which is incorporated herein by reference as if fully rewritten. A complete copy of Exhibit B is also on file with the Clerk of Council.

Section 4. Chapter 1650 of the Codified Ordinances of the City of University Heights, entitled "Smoking in Public Places," shall be, and is hereby, amended in its entirety to read as set forth in Exhibit C hereto, a copy of which is attached and which is incorporated herein by reference as if fully rewritten. A complete copy of Exhibit C is also on file with the Clerk of Council.

Section 5 Chapter 1650 of the Codified Ordinances as existing immediately prior to the passage of this Ordinance is hereby repealed.

Section 6 The Clerk of Council is hereby directed to mail letters attaching a copy of this Ordinance and declaring this Council's support that the legal age to purchase tobacco should be changed to twenty-one (21) years old throughout the rest of Ohio and across the nation to Governor Mike DeWine, Ohio Senate President Larry Obhof, Ohio House Speaker Larry Householder, Ohio Senator Sandra Williams, Ohio Representative Janine Boyd, U.S. Representative Marcia Fudge, U.S. Senator Rob Portman, U.S. Senator Sherrod Brown, and President Donald Trump.

Section 7. It is hereby 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 deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements.

CITY OF UNIVERSITY HEIGHTS, OHIO



MICHAEL DYLAN BRENNAN, MAYOR

FIRST READING: 03/04/2019

PASSED: 03/18/2019

ATTEST:



KELLY M. THOMAS, CLERK OF COUNCIL

APPROVED AS TO FORM:



LUKE F. MCCONVILLE, LAW DIRECTOR

EXHIBIT A

**Chapter 874
CIGARETTE AND TOBACCO VENDORS;
SALES TO PERSONS UNDER 21**

874.01 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 874.03 herein.

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

(d) “Permitting Agent” means an entity with which the City of University Heights 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 twenty-one (21) years of age.

(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 twenty-one (21) years of age or older (i.e., 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 smoked, 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 products that is a “drug” as that term is defined in 21 U.S.C. 321(g)(1);
- (2) Any products 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).

SECTION 874.02 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 thirty (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.

874.03 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 Revised Code 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 One Hundred Dollars (\$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 twenty-five percent (25%) 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.

874.04 PERMIT REVOCATION, DENIAL, OR SUSPENSION.

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

1. The Permit applicant had a Permit revoked within the previous three (3) years;
2. The Permit applicant is determined to have knowingly included false or misleading information in the Permit application or renewal Permit applications;
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 that sales of Tobacco Products shall cease pursuant to any temporary restraining order, preliminary injunctions, 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; and/or
6. The Permit applicant has failed to provide any of the items required under Subsection 874.03(b).

(b) For purposes of subdivision (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 (6) 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 One Hundred Dollars (\$100) Permit reinstatement administration fee. A Permit may be suspended for any of the following reasons:

1. 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 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 twelve (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 is refused or inspection, or investigation is refused, hindered, or thwarted; and/or;
5. The Permit 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 twelve (12) months;
3. Entry of a City or its Permitting Agent 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; and/or;
5. The Permittee has been subject to three (3) or more suspensions in the previous twenty-four (24) month period.

874.05 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.

874.06 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.

874.07 POSTING OF SIGNS; EDUCATION; OUTREACH.

(a) Effective January 1, 2019, a sign stating “Under 21 Sales of Tobacco and Nicotine Products and Devices Prohibited by Law” and “Pursuant to Chapter 874 of the University Heights Codified Ordinances” shall be posted. The font for “Pursuant to Chapter 874 of the University Heights Codified Ordinances” shall be no smaller than 1/2 inch in height. The font for “Under 21 Sales of Nicotine Prohibited by Law” shall be no smaller than 1/6 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, publicize and/or such other education events or efforts to foster awareness of the requirements of 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 (6) months of the program and at regular intervals as necessary thereafter.

874.08 ENFORCEMENT, APPEALS.

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

(b) The City and/or its Permitting Agent may conduct an inspection of a business prior to issuing a Permit. The City and/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 and/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 and/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 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 and/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 and/or its Permitting Agent may impose the following civil penalties for violations of this Chapter:

1. For a first violation, \$500.00.
2. For a second violation, within five (5) years of the first violation, \$1,000.00.
3. For a third violation within five (5) years of the first violation, \$1,500.00.
4. For a fourth violation within five (5) years of the first violation, administrative permit review to determine if the permit should be suspended or revoked.

(d) When the City and/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 and/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 and/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 fourteen calendar (14) 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 City Council which shall conduct a quasi-judicial hearing consistent with the requirements for a quasi-judicial hearing as set forth in Chapter 2506 of the Ohio Revised Code. The burden of proof by preponderance of the evidence shall be upon the City and/or its Permitting Agent. The City Council shall be the final, administrative decision maker.

874.09 INJUNCTIVE RELIEF/1ST DEGREE MISDEMEANOR.

(a) The provisions of Sections 874.01 through 874.08, 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.

(c) Violation of the regulations set forth in this Chapter 874 shall be a 1st degree misdemeanor as set forth in Codified Ordinance Chapter 614.

874.10 EFFECTIVE DATE.

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

EXHIBIT B

**Chapter 614
TOBACCO PRODUCTS**

SECTION 614.01 DEFINITIONS.

For the purpose of this Chapter:

(a) "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 smoked, 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 products that is a "drug" as that term is defined in 21 U.S.C. 321(g)(1);
- (2) Any products 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).

(b) "Underage Person" means a person under the age of 21.

SECTION 614.02 SALE TO PERSONS UNDER 21 PROHIBITED.

(a) No Permittee or agent of Permittee shall sell or otherwise distribute to any Underage Person (i.e., 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 thirty (30) years of age by a Proof of Age.

SECTION 614.03 FURNISHING OR USE OF FALSE PROOF.

(a) No person shall knowingly furnish any false information as to the name, age, or other identification of any Underage Person (i.e., parson under 21), for the purpose of obtaining, or with the intent to obtain, Tobacco Products for an Underage Person, by purchase or as a gift.

(b) No Underage Person shall knowingly show or give false information concerning his or her name, age, or other identification, for the purpose of obtaining, or with the intent to obtain, any Tobacco Product in any place in this municipality where Tobacco Products are sold.

SECTION 614.04 PENALTY.

(a) Whoever violates Section 614.02 of this chapter::

- (1) On a first occurrence, is guilty of a minor misdemeanor punishable by a fine of up to \$150.00;
- (2) On a second occurrence within five (5) years of the first occurrence, is guilty of a 4th degree misdemeanor punishable by a fine of up to \$250.00; and



(3) On a third occurrence or greater within five (5) years of the first occurrence, is guilty of a 3rd degree misdemeanor, punishable by a fine of up to \$500.00.

(b) Whoever violates Section 614.03 of this chapter is guilty of a minor misdemeanor punishable by a fine of up to \$150.00.

(c) Under no circumstances shall any person found guilty of any violation of Section 614.02 and/or 614.03 be subject to jail time or imprisonment.

EXHIBIT C

CHAPTER 1650
Smoking in Public Places

1650.01 DEFINITIONS.

In addition to any meanings under Ohio R.C. 3791.091 and/or Section 660.13 of the General Offenses Code, the following words and phrases, whenever used in this chapter, shall be construed as defined in this section.

(a) "Cocktail lounge and bar" means any establishment licensed by the Ohio Department of Liquor Control to sell intoxicating beverages for consumption on the premises and in which the service of food is only incidental to the consumption of such beverages.

(b) "Eating establishment" means any restaurant, coffee shop, cafeteria, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, and any other establishment (excluding bars) where cooked or otherwise prepared food is sold to members of the general public for consumption on the premises.

(c) "Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit or as a volunteer.

(d) "Employer" means any person who employs the services of an individual person or any person in charge of a place of employment. Such term excludes building owners and managers in areas leased, rented or otherwise controlled by tenants.

(e) "Enclosed indoor area" means closed in by a roof and walls on at least three sides with appropriate openings for ingress and egress.

(f) "Establishment" means any physical facility operated by a commercial enterprise, nonprofit entity, government agency or any other person.

(g) "Grocery store" means any supermarket, convenience store, and any other retail food production and marketing establishment.

(h) "Health-care facility" means any laboratories associated with the rendition of health-care treatment, hospitals, rest homes, nursing homes, doctors' offices, dentists' offices and other establishments involved in the provision of health care.

(i) "Indoor places of entertainment and recreation" means enclosed indoor areas used for play, amusement, diversion, relaxation or social activities including but not limited to bowling alleys, roller and ice skating rinks, dance halls, swimming pools and bingo halls.

(j) "Members of the general public" means shoppers, customers, patrons, patients, students, clients and other similar invitees of any establishment and excludes employees thereof, sales representatives, service repair persons, and persons delivering goods, merchandise or services to such establishment.

(k) "Outdoor Patio" means a structure with a roof and two or fewer side walls, or a structure or designated area with no roof, regardless of the number of side walls.

(l) "Person" means any individual, firm, partnership, association, corporation, company, organization, or legal entity of any kind.

(m) "Place of employment" means that portion of any enclosed, indoor area under the control of a public or private employer which employees normally frequent during the

course of employment but to which members of the general public are not normally invited, including, but not limited to, such areas in office work places, factories, warehouses and laboratories. The dining area of an eating establishment is not a place of employment. A private residence is not a place of employment.

(n) "Polling place" means the entire room, hall, garage, or other facility in which persons cast ballots in an election, but only during such time as election business is being conducted.

(o) "Proprietor" means the owner, manager, operator or other person in charge of a public place. Such term excluded building owners and managers in areas leased, rented or otherwise controlled by tenants.

(p) "Public conveyance" means any mass transit vehicle or school bus.

(q) "Public place" means that portion of any enclosed, indoor area to which members of the general public are invited or in which members of the general public are permitted. A private residence is not a public place.

(r) "Restaurant" means any enclosed area to which the public is invited or in which the public is permitted, that offers food and beverages for consumption on the premises or take-out service.

(s) "Retail stores and service establishments" means establishments that sell goods or services directly to members of the general public including, but not limited to, grocery stores, specialty stores, department stores, pharmacies, automobile dealerships, showrooms, banks, professional offices, service stations, repair or maintenance stores, barber or beauty shops, cleaners and laundromats.

(t) "Retail tobacco store" means a retail store used primarily for the sale of Tobacco Products, smoking materials and smoking accessories and in which the sale of other products is incidental. "Retail tobacco store" does not include a tobacco department of a large retail store such as a department store or discount store.

(u) "Service line" means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

(v) "Sign" means legible, English lettering on a contrasting background to clearly indicate where smoking is permitted or not permitted and to provide related information. The International "NO SMOKING" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) may be used in, or substituted for, a sign indicating that smoking is prohibited. A sign shall be of sufficient size to be clearly legible to one of normal vision throughout the area it is intended to mark.

(w) "Smoking" means the lighting, holding or carrying of, or emitting or exhaling the smoke of any pipe, cigar or cigarette of any kind or other use of Tobacco Products.

(x) "Smoking material" means any cigar, cigarette, pipe, weed, plant, e-liquids, cigars, little cigars, pipe tobacco, chewing tobacco, snuff, or snus, , e-cigarettes, e-cigars, e-pipes, vapor products, e-hookahs, 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, or other smoking equipment in any form.

(y) "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 smoked, 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 products that is a "drug" as that term is defined in 21 U.S.C. 321(g)(1);
- (2) Any products 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).

(z) "Vehicles of public transportation" means trains, buses, trolleys, limousines for hire, taxicabs, courtesy vehicles, ferries, and similar conveyances as well as their association terminals.

(aa) "Work area" means any room, desk, station or other area normally occupied by an employee while carrying out his or her primary work functions.

1650.02 RESTRICTIONS ON SMOKING IN PUBLIC PLACES.

(a) Smoking and Use of Tobacco Products Prohibited. Except as provided in Section 1650.04 the possession of lighted smoking materials in any form or use of Tobacco Products is prohibited in any of the following enclosed public places, excluding portions to which members of the general public are not normally invited:

- (1) Retail stores and service establishments;
- (2) Vehicles of public transportation;
- (3) Enclosed theaters, auditoriums, concert halls, arenas and public meeting rooms except portions of the lobby associated with such establishments if a smoking area is designated therein pursuant to division (b) hereof;
- (4) Elevators, elevator lobbies, stairwells, escalators and hallways;
- (5) Indoor service lines;
- (6) Public restrooms;
- (7) Courtrooms, jury waiting rooms and deliberation rooms;
- (8) Educational facilities;
- (9) Polling places;
- (10) Health-care facilities;
- (11) Gymnasiums, exercise rooms and health spas;
- (12) Libraries;
- (13) Places of exhibition including but not limited to museums, aquariums, and galleries.
- (14) Any Municipally-owned building;
- (15) City Council Chambers;
- (16) Classrooms and lecture halls;

(17) Designated non-smoking areas of restaurants; and

(18) Areas within gasoline service stations, as defined in Ohio R.C. 3741.14.

(b) Smoking and Use of Tobacco Products Prohibited Except in Designated Sections. Except as provided in Sections 1650.04 and 1650.05, the possession of lighted smoking materials in any form and/or use of Tobacco Products is prohibited in any public places, or portions thereof, not identified in division (a) hereof, excluding portions to which members of the general public are not normally invited, including, but not limited to:

(1) Eating establishments and bars;

(2) Hotel and motels including rooms rented to guests;

(3) Indoor places of entertainment and recreation;

(4) Enclosed shopping centers and malls except retail stores and service establishments therein listed in subdivision (a)(1) hereof;

(5) Waiting areas and lobbies except elevator lobbies listed in division (a)(4) hereof and waiting areas and lobbies within establishments listed in divisions (a)(1) and (a)(7) through (a)(13);

(6) Buildings and enclosed structures (or any portion thereof) owned, leased or operated by the City; and

(7) Any other enclosed indoor area used by members of the general public.

(c) Responsibilities of Proprietors. The proprietor of a place within divisions (a) or (b), hereof shall utilize his or her best efforts to ensure that the provisions of this division are met with regard to such place.

(1) Signs. Signs indicating whether or not smoking is permitted shall be clearly, sufficiently, and conspicuously posted in every room, building, or other place where smoking is regulated by this chapter.

A. In grocery stores, signs indicating that smoking is prohibited shall be visible to people entering the store, people at meat and produce counters, and people in all checkout lines.

B. In theaters, auditoriums, concert halls and public meeting rooms, signs stating that smoking is prohibited shall be conspicuously posted within such areas and in associated lobbies.

C. At indoor service lines, signs indicating that smoking is prohibited shall be visible to people in such lines.

D. In eating establishments and bars, a sign shall be posted at the entrance clearly stating that a no-smoking section is available, and individual table signs indicating that smoking is prohibited shall be placed on all tables in the no smoking section of the dining area.

E. Signs indicating that smoking is prohibited in elevators, elevator lobbies, stairwells, escalators and hallways shall be posted in elevators, elevator lobbies on each floor, and stairwell and escalator entrances on each floor.

(2) Public seating. Where seating is provided for the public and a smoking area has been designated under Section 1650.05 seating shall be arranged to provide a contiguous no-smoking area of sufficient size to meet customer demand; a seat in a no-smoking area shall be provided for all persons requesting such a seat; and, in the case of controlled

seating, each customer shall be asked as to his or her preference for smoking or no-smoking seating.

(3) Ashtrays. Ashtrays shall be removed from areas where smoking is prohibited.

(4) Enforcement. Persons smoking and/or using Tobacco Products in violation of this chapter shall be requested to stop.

(5) Resolution of disputes. In any dispute arising under this chapter, the rights of the nonsmoker shall be given preference over the smoker's desire to smoke.

(6) Ventilation/exhaust. Wherever smoking is designated or permitted, the proprietor shall provide and keep in operation fully adequate ventilation so as to exhaust the fumes and smell of smoke away from all public and private nonsmoking areas. (See Section 1650.05(b)).

1650.03 RESTRICTIONS ON SMOKING IN PLACES OF EMPLOYMENT.

(a) Smoking and Use of Tobacco Products Prohibited. Except as provided in Section 1650.04, the possession of lighted smoking materials and/or use of Tobacco Products in any form is prohibited in any of the following areas within a place of employment:

- (1) Employee stationary work areas;
- (2) Elevators, elevator lobbies, stairwells, escalators and hallways;
- (3) Indoor service lines;
- (4) Employee restrooms;
- (5) Conference rooms, meeting rooms, classrooms and auditoriums; and
- (6) Medical facilities.

(b) Smoking and Use of Tobacco Products Prohibited Except in Designated Sections. Except as provided in Sections 1650.04 and 1650.05, the possession of lighted smoking materials and/or use of Tobacco Products in any room is prohibited in any areas within a place of employment not identified in division (a) hereof, including but not limited to:

- (1) Cafeterias, lunchrooms and employee lounges;
- (2) Waiting areas and lobbies except elevator lobbies listed in division (a)(2) hereof; and
- (3) Any other enclosed indoor area used by employees.

(c) Responsibilities of Employers. The employer of a place within divisions (a) or (b) shall utilize his or her best efforts to ensure that the provisions of this section are met with regard to such places.

(1) Smoking Policy. Notwithstanding the foregoing, each employer shall comply with the terms and provisions of the Ohio Smoke Free Workplace Act of 2006.

(2) Signs. Signs indicating whether or not smoking and/or use of Tobacco Products is permitted shall be clearly, sufficiently, and conspicuously posted in every room, building, or other place managed by the employer and regulated by this chapter. The employer shall provide signs indicating that smoking and/or use of Tobacco Products is prohibited to any employee requesting such signs for the purpose of identifying his or her work area as a no-smoking area. Signs indicating that smoking is prohibited in elevators,

elevator lobbies, stairwells, escalators and hallways shall be posted in elevators, elevator lobbies on each floor, and stairwell and escalator entrances on each floor.

(3) Ashtrays. Ashtrays shall be removed from areas where smoking is prohibited.

(4) Enforcement. Persons smoking in violation of the employer's smoking policy or this chapter shall be requested to stop.

(5) Resolution of disputes. In any dispute arising under the employer's smoking policy or this chapter, the rights of the nonsmoker shall be given preference over the smoker's desire to smoke.

1650.04 EXEMPTIONS.

The restrictions in Sections 1650.02 and 1650.03 shall not apply to:

(a) Retail tobacco stores;

(b) A private work area, enclosed by floor-to-ceiling walls with appropriate openings for ingress and egress; which is occupied exclusively by smokers, even though such office may be visited by nonsmokers, provided that:

(1) This exemption shall not be permitted where it conflicts with the requirements in Section 1650.03(c)(6), and

(2) This exemption shall not be construed to permit smoking in the reception areas of lobbies or offices;

(c) Private residences except those portions of a private residence used as a child-care or health-care or elderly care facility or serving as a place of employment.

(d) Any other business specifically exempt under the Ohio Smoke Free Workplace Act of 2006.

This section shall not be interpreted or construed to require proprietors or employers in charge of places within divisions (a) through (i) hereof to permit smoking therein.

1650.05 DESIGNATION OF SMOKING AREAS.

All businesses located in the City of University Heights shall comply with the terms and provisions of the Ohio Smoke Free Workplace Act of 2006 (the "Act"). Only exempt businesses, as defined under the Act, may designate smoking areas.

1650.06 TOBACCO PRODUCTS VENDING MACHINES.

Vending machines shall be supervised so that only individuals over the age of 21 are able to purchase cigarettes or any other Tobacco Products.

1650.07 RESTAURANTS.

Smoking and/or use of Tobacco Products is prohibited in any restaurant, except on Outdoor Patios.

1650.08 VIOLATIONS AND PENALTIES.

(a) No person who owns, manages, operates or otherwise controls the use of any establishment subject to the restrictions of this chapter shall fail to comply with its provisions, except that no violation of this section shall be presumed solely on the basis of violations of division (b) hereof.

(b) No person shall smoke in any area restricted by the provisions of this chapter.

(c) Any person who violates any provision of this chapter is guilty of a minor misdemeanor.

(d) Each day on which a violation of any provision of this chapter occurs is a separate and distinct offense and shall be punishable as such.

(1982 Code, § 1519.06) (Ord. 87-48. Passed 11-2-1987.)

1650.09 ENFORCEMENT.

Enforcement shall be implemented by the Fire Prevention Bureau which shall upon receipt of repeated citizen complaints, specifically three or more complaints within six months, with regard to a particular establishment and or for establishments found out of compliance with this chapter:

(a) Provide to the proprietor or employer a copy of the provisions of this chapter and such advisory assistance to rectify future violations as may be necessary to achieve compliance with the provisions of this chapter;

(b) Follow-up such investigation and advice with a written directive explaining in detail the steps required in order to achieve future compliance with the provisions of this chapter; and

(c) If the violations do not cease within 30 days after issuing such directive, request commencement of a civil and/or criminal proceeding by the prosecutor, as may be appropriate pursuant to the provisions of Section 1650.06.

1560.10 EDUCATION.

The Department shall engage in a continuing program to inform and clarify the purposes of this chapter to citizens affected by it, and to guide proprietors and employers in their compliance. The Department shall prepare guidelines for the designation of smoking areas including, but not limited to, the number, size, barrier, ventilation and placement of such areas, and shall encourage proprietors and employers to utilize the guidelines in designating such areas.

1650.11 GOVERNMENTAL AGENCY COOPERATION.

The Mayor shall annually request such governmental and educational agencies not under the jurisdiction of the City having offices within the City to establish local operating procedures to cooperate and comply with this chapter and shall urge enforcement of their existing smoking restrictions.

1650.12 RELATION TO OTHER LAW.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by law, nor to relieve any proprietor, employer, or other responsible party from any liability resulting from exposure to tobacco smoke. Nothing in this chapter shall prevent any political subdivision of the City from regulating smoking within its boundaries, provided that such rules are at least as stringent as those imposed by this chapter. In such cases, a more stringent local rule shall control to the extent of any inconsistency between it and this chapter.

1650.13 SEVERABILITY.

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