

## RECORD OF ORDINANCES

Ordinance No. 2018-81Passed October 17, 20 18

SPONSOR: SAFETY COMMITTEE

AN ORDINANCE AMENDING THE MOGADORE CODIFIED ORDINANCES TO PROHIBIT THE SALE OR OTHER DISTRIBUTION OF CIGARETTES, OTHER TOBACCO PRODUCTS, OR ALTERNATIVE NICOTINE PRODUCTS TO PERSONS UNDER 21 YEARS OF AGE AND DECLARING AN EMERGENCY

WHEREAS, tobacco use is the leading cause of preventable death in the United States ("U.S."), resulting in approximately 480,000 deaths a year, or one in five of all deaths in the U.S.; and

WHEREAS, more than 16 million Americans live with a disease caused by smoking, resulting in direct medical costs of about \$170 billion annually, with total economic costs of more than \$300 billion annually; and

WHEREAS, if current rates of youth tobacco use continue, 5.6 million Americans currently under the age of 18 are expected to die from smoking; and

WHEREAS, tobacco use contributes to many of Ohio and the Village of Mogadore's greatest health challenges, including cardiovascular disease, cancer, and infant mortality; and

WHEREAS, according to 2014 data, in Summit County, pregnant women under age 21 smoke at a rate that is 70% higher than their older counterparts and 23.7% of pregnant women in Summit County age 18 to 21 smoked while pregnant; and

WHEREAS, research shows that increasing the tobacco sales age to 21 across the U.S. could result in 249,000 fewer premature deaths, 286,000 fewer pre-term births, and 438,000 fewer babies with low birth weight; and

WHEREAS, studies show that young people who are addicted to nicotine are seven times more likely to suffer from a drug use disorder, and that individuals who have never used tobacco by age 21 are unlikely to ever start smoking; and

WHEREAS, 75% of adults support raising the tobacco sales age to 21, including 70% of smokers, and five states and more than 270 U.S. cities have already done so; and

WHEREAS, military leaders are supportive of raising the tobacco age to 21 due to tobacco's negative impact on military readiness; and

WHEREAS, the Village of Mogadore seeks to promote the health and well-being of all its citizens.

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NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF MOGADORE, COUNTIES OF SUMMIT AND PORTAGE, STATE OF OHIO, THAT:

SECTION 1: Section 135.25 ILLEGAL DISTRIBUTION OF CIGARETTES, OTHER TOBACCO PRODUCTS, OR ALTERNATIVE NICOTINE PRODUCTS; TRANSACTION SCANS, is hereby amended to state as follows:

**§ 135.25 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 the purchaser is 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.** Has the same meaning as in RC. § 2151.011.

**CIGARETTE.** Includes clove cigarettes and hand—rolled cigarettes.

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***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 SMOKING DEVICE.*** Means any device that can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. electronic smoking device 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. electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. food and drug administration, as those terms are defined in the federal food, drug and cosmetic act.

***PERSON UNDER 21.*** For purposes of this section, means a 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 RC. §§ 4507.50 to 4507.52 that shows that a person is 18 years of age or older.

***TOBACCO PRODUCT.*** Means any product that is made from or derived from tobacco, and 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, a cigar, pipe tobacco, chewing tobacco, snuff, or snus. the term also includes tobacco product paraphernalia, including but not limited to, electronic smoking devices and any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, or liquids used in electronic smoking devices, whether or not they contain nicotine. Tobacco product does not include drugs, devices, or combination products authorized for sale by the U.S. food and drug administration, as those terms are defined in the federal food, drug and cosmetic act.

***TOBACCO PRODUCT PARAPHERNALIA.*** Means any product that is used to assist in chewing, smoking, absorbing, dissolving, inhaling, or any other consumption of nicotine to include, but not limited to pipes, rolling papers, and electronic cigarette cases.

***VENDING MACHINE.*** Has the same meaning as "coin machine" in RC. § 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:

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(a) Give, sell, or otherwise distribute cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to any child **or person under 21, except as otherwise provided by divisions (D) and (E) of section 2927.02 of the Ohio Revised Code.**

(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 21 years of age is prohibited by law, **except as otherwise provided by divisions (D) and (E) of section 2927.02 of the Ohio Revised Code.**

(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 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.

(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 or persons under 21 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:

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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) 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 or person under 21 under division (A)(2)(a) 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) 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 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) (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, 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.

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(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.

(7) 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.  
(R.C. § 2927.02)

(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.

**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.

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(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 RC. § 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.

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(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.  
(RC. § 2927.021)

(C) *Affirmative defenses.*

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



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(3) In any criminal action in which the affirmative defense provided by division (C)(l) of this section is raised, the Registrar of Motor Vehicles or a deputy registrar who issued an identification card under RC. §§ 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.

(R.C. § 2927.022)

(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 and other tobacco products to persons under 21.

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

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(b) No motor carrier or other person shall knowingly transport cigarettes to any person in this municipality that the carrier or other person reasonably believes is not an authorized recipient of tobacco products. If cigarettes 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 were delivered was not an authorized recipient of tobacco products.

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

(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.  
(R.C. § 2927.023)

**(E) COMPLIANCE WITH REGULATIONS**

**(1) All manufacturers, producers, distributors, wholesalers, or retailers of cigarettes, other tobacco products, or tobacco product paraphernalia shall comply with any applicable certification requirements promulgated by the Summit County Combined General Health District.**

**(2) Whoever violates this section shall be subject to a civil penalty for illegal distribution of cigarettes, tobacco products, or tobacco product paraphernalia. Whoever violates this section shall not be subject to a fine for a first violation. A civil fine of \$500 will be issued for a second violation of this section. A civil fine of \$1000 will be issued for all subsequent violations.**

**(3) All fines collected by the Summit County Combined General Health District pursuant to this section shall be utilized for efforts to prevent smoking initiation by persons under the age of 21 or for efforts to promote smoking cessation, including supports for those who will no longer be able to purchase cigarettes or other tobacco products pursuant to this section.**

**(4) Notwithstanding any other provision of this title, enforcement authority of this section shall rest with the Summit County Combined General Health District pursuant to O.R.C. 3709.281. Enforcement of this ordinance, including the issuance of penalties, shall only be undertaken following the adoption of regulations by the Summit County Combined General Health District relating to the enforcement.**

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SECTION 2: The Village of Mogadore finds and determines that all formal actions of this Council concerning and relating to the adoption of this ordinance were taken in open meetings of this Council and any deliberations of this Council and any of its committees that resulted in this formal action were in meetings open to the public, in compliance with all legal requirements, including §121.22 of the Ohio Revised Code.

SECTION 3: This Ordinance is hereby declared to be an emergency measure found necessary so as to amend the Village Ordinances pertaining to the sale and distribution of tobacco products and for the immediate preservation of the public peace, health, and safety of the residents of the Village of Mogadore and shall take effect and be in force from and after its passage by Council and approval by the Mayor or at the earliest period allowed by law.

Michael Addish 10-17-18

President of Council

Date

Mich

10-17-18

Mayor

Date

Attest:

Scott Varney  
Clerk-Treasurer

I, Scott Varney, Clerk-Treasurer of the Village of Mogadore, Summit and Portage Counties, Ohio, do hereby certify that the foregoing Ordinance 2018-81 was duly passed by the Council of the Village of Mogadore, Counties of Summit and Portage, State of Ohio at a meeting of Council on this 17 day of October, 2018.