

## **ORDINANCE NO. 34 - 20**

By: Jen Robinson

### **An Ordinance Modifying Chapter 636.16 of the Codified Ordinances, to Prohibit the Sale of Flavored Vaping Products within the City of Bexley.**

**Whereas**, The City of Bexley seeks to promote the health, wellness, and safety of all residents; and,

**Whereas**, The City of Bexley has historically been a leader in anti-smoking efforts, being the first community in the State of Ohio to enact an indoor smoking ban and one of the first central Ohio communities to ban the sale of smoking products to persons under the age of 21; and,

**Whereas**, according to the Centers for Disease Control and Prevention and the National Youth Survey for Tobacco-Free Kids, there has been a 135% increase in vaping by high school students since 2017; and,

**Whereas**, teens who vape are nearly 4-times more likely to smoke cigarettes than their peers who don't use any type of tobacco products; and,

**Whereas**, nicotine exposure can harm adolescent brain development affecting attention, learning, mood and impulse control and can lead to stronger addiction.; and,

**Whereas**, one-third of all middle and high school users use e-cigarette pods as a vehicle to smoke marijuana; and,

**Whereas**, a 2018 study by the CDC found that many adults use e-cigarettes in an attempt to quit smoking; however, most adult e-cigarette users continue to smoke cigarettes in combination with e-cigarette products (Dual Use); and,

**Whereas**, e-cigarette flavored pods have been used overwhelmingly to attract those who have not previously used nicotine or tobacco products; and,

**Whereas**, 53% of e-cigarettes are purchased from convenience stores, food, drug and mass retail chains in comparison to 28% from online retailers and 19% from specialty/vape shops; and,

**Whereas**, due to the effects of vaping on the inner lining of the lungs, children under the age of eighteen who have used a vape or e-cigarettes product are 5 times more likely to develop COVID-19, and children under the age of eighteen who have used a vape or e-cigarette product within 30 days are 7 times more likely to develop COVID-19;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY:**

That Chapter 636.16 shall be modified in the Bexley Codified Ordinances and shall be as follows:

**Section 1**

That Section 636.16(a)(5)A shall be modified as follows:

- A. E-CIGARETTE is defined as , subject to subsection (a)(6)B. of this section, **any electronic product or a device consisting of a mouthpiece, a battery, a cartridge for containing the e-liquid or e-juice, and heating component for the device that is powered by a battery** that produces a vapor that delivers nicotine or any other substance to the person inhaling from the device including, but not limited to products likely to be offered to or purchased by consumers as an electronic cigarette, electronic cigar, electronic cigarillo, vape pen, e-hookah, or electronic pipe.

**Section 2**

That Section 636.16(a)(5) C and D shall be created as follows:

**C. FLAVORED VAPING PRODUCT is any product or pod (commonly known as vapes) containing liquid nicotine, which is the same chemical found in traditional cigarettes. In addition to containing nicotine, tetahydrocannabinol (THC) and cannabinoid (CBD) oils, these products contain additional flavorings and additives making them more attractive, especially to younger consumers.**

**D. VAPING is defined as the act of inhaling and exhaling the aerosol, often referred to as vapor, which is produced by an e-cigarette or similar device**

(definitions provided by the Center on Addiction, CDC and Tobacco Free Kids)

**Section 3**

That 636.16(b)(7) shall be created:

636.16(b)(7) Give, sell or otherwise distribute Flavored Vaping Products to any person, regardless of age.

#### Section 4

That this Ordinance shall take effect and be in force from and after the earliest period allowed

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

(a) As used in this section:

(1) "Age verification" means a service provided by an independent third party (other than a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes) that compares information available from a commercially available database, or aggregate of databases, that regularly are used by government and businesses for the purpose of age and identity verification to personal information provided during an internet sale or other remote method of sale to establish that the purchaser is twenty-one years of age or older.

(2) A. "Alternative nicotine product" means, subject to subsection (a)(2)B. of this section, an electronic cigarette or any other product or device that consists of or contains nicotine that can be ingested into the body by any means, including, but not limited to, chewing, smoking, absorbing, dissolving or inhaling.

B. "Alternative nicotine product" does not include any of the following:

1. Any cigarette or other tobacco product;

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

3. Any product that is a "device" as that term is defined in 21 U.S.C. 321(h);

4. Any product that is a "combination product" as described in 21 U.S.C. 353(g).

(3) "Cigarette" includes clove cigarettes and hand-rolled cigarettes.

(4) "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.

(5) A. "Electronic cigarette" means, subject to subsection (a)(6)B. of this section, any electronic product or a device consisting of a mouthpiece, a battery, a cartridge for containing the e-liquid or e-juice, and heating component for the device that is powered by a battery that produces a vapor that delivers nicotine or any other substance to the person inhaling from the device including, but not limited to products likely to be offered to or purchased by consumers as an electronic cigarette, electronic cigar, electronic cigarillo, vape pen, e-hookah, or electronic pipe.

B. "Electronic cigarette" does not include any item, product or device described in subsections (a)(2)B.1. to 4. of this section.

C. FLAVORED VAPING PRODUCT is any product or pod (commonly known as vapes) containing liquid nicotine, which is the same chemical found in traditional cigarettes. In addition to containing nicotine, tetahydrocannabinol (THC) and cannabinoid (CBD) oils, these products contain additional flavorings and additives making them more attractive, especially younger consumers.

D. VAPING is defined as the act of inhaling and exhaling the aerosol, often referred to as vapor, which is produced by an e-cigarette or similar device

(6) "Tobacco product" means any product that is made from tobacco, including, but not limited to, a cigarette, a cigar, little cigar, cigarillo, pipe tobacco, chewing tobacco or snuff

(7) "Vending machine" has the same meaning as "coin machine" in Ohio R.C. 2913.01.

(b) No manufacturer, producer, distributor; wholesaler, or retailer of cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes, no agent, employee, or representative of a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes, and no other person shall do any of the following:

(1) Give, sell or otherwise distribute cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to any person under the age of twenty-one;

(2) Give away, sell or distribute cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes in any place that does not have posted in a conspicuous place a sign stating that giving, selling or otherwise distributing cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to a person under twenty-one years of age is prohibited by law;

(3) Knowingly furnish any false information regarding the name, age or other identification of any person under the age of twenty-one with purpose to obtain cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes for that person;

(4) Manufacture, sell or distribute in this City any pack or other container of cigarettes containing fewer than twenty cigarettes or any package of roll-your own tobacco containing less than six-tenths of one ounce of tobacco;

(5) Sell cigarettes, other tobacco products, or alternative nicotine products in a smaller quantity than that placed in the pack or other container by the manufacturer;

(6) Give, sell or otherwise distribute alternative nicotine products, papers used to roll cigarettes, or tobacco products other than cigarettes over the internet or through another remote method without age verification.

(7) Give, sell or otherwise distribute Flavored Vaping Products to any person, regardless of age.

(c) No person shall sell or offer to sell cigarettes, other tobacco products or alternative nicotine products by or from a vending machine, except in the following locations:

(1) An area within a factory, business, office, or other place not open to the general public;

(2) An area to which persons under the age of twenty-one are not generally permitted access;

(3) Any other place not identified in subsection (c)(1) or (2) of this section, upon all of the following conditions:

A. The vending machine is located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of that person, so that all cigarettes, other tobacco product and alternative nicotine product purchases from the vending machine will be readily observed by the person who owns or operates the place or an employee of that person. For the purpose of this section, a vending machine located in any unmonitored area, including an unmonitored coatroom, restroom, hallway or outer-waiting area, shall not be considered located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of that person.

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

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

(1) The person who gave, sold or distributed cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to an underage person under subsection (b)(1) of this section is a parent, spouse, or legal guardian who is twenty-one years of age or older.

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

products, or alternative nicotine products is a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of subsection (b)(1), (2), (4), (5) or (6) or (c) of this section, illegal distribution of cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the third degree.

(2) Whoever violates subsection (b)(3) of this section is guilty of permitting an underage person to use cigarettes, other tobacco products, or alternative nicotine products. Except as otherwise provided in this subsection, permitting an underage person to use cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of subsection (b)(3) of this section, permitting an underage person to use cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the third degree.

(Ord. 23-15. Passed 6-23-15.)