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AGENDA

Committee of the Whole

6:00 PM February 27, 2023

Council Members:

Omar Tarazi

Cynthia Vermillion

Les Carrier

Tina Cottone

Peggy Hale

Pete Marsh

Andy Teater

President

Vice President

Michelle Crandall, City Manager

Diane (Dee) Werbrich, Clerk of Council

City Hall, Council Chambers • 3800 Municipal Way, Hilliard, OH 43026



I. Call to Order

II. Roll Call

III. Approval of Minutes

A. February 13, 2023, Committee of the Whole

IV. Business

A. Flavored and Menthol Tobacco Presentation (Dr. Crane and Ms. Turner, Tobacco 21)

V. Items for Discussion

A. Amending Codified Ordinances re: Banning Flavored Tobacco

VI. Adjournment



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CITY COUNCIL

February 13, 2023 Committee of the Whole Minutes

CALL TO ORDER

The meeting was called to order by President Omar Tarazi at 6:23 PM.

ROLL CALL

Attendee Name:	Title:	Status:
Omar Tarazi	President	Present
Cynthia Vermillion	Vice President	Present
Les Carrier	Councilman	Present
Tina Cottone	Councilwoman	Present
Peggy Hale	Councilwoman	Present
Pete Marsh	Councilman	Present
Andy Teater	Councilman	Present

Staff Members Present: City Manager Michelle Crandall, Law Director Phil Hartmann, Assistant City Manager Dan Ralley, Chief People Person/HR Director Colleen Lemmon, City Planner John Talentino, IT Director Duane Powell, Transportation and Mobility Director Letty Schamp, Community Relations Director David Ball, Recreation and Parks Director Ed Merritt, City Engineer Clark Rausch, Police Chief Mike Woods, Deputy Police Chief Ron Clark and Clerk of Council Diane Werbrich

APPROVAL OF MINUTES

President Tarazi asked if there were any changes to the January 23, 2023, Committee of the Whole meeting minutes. Hearing none, the minutes were approved as submitted.

STATUS:	Accepted
AYES:	Tarazi, Vermillion, Carrier, Cottone, Hale, Marsh, Teater

BUSINESS

President Tarazi apologized to the audience that this meeting is starting later than scheduled due to additional time that was need for the Special/Executive Session.

A. BIG DARBY & FUTURE DEVELOPMENT STANDARDS

Mr. Marsh stated Council received the background information that he sent prior to the meeting and reviewed the proposed changes to Chapter 1115.04 - Hilliard Conservation District Requirements.

Section (3)(c) Staff Review - added reviews from the Shade Tree and Environmental Sustainability Commission. Mr. Marsh stated these would be advisory recommendations with a written report provided to Council. For example the Shade Tree Commission may review some of the planting components of a development.

Section (d)(14) This section existed previously but added the sentence "No invasive species as identified by the Ohio Department of Agriculture shall be permitted in landscape planting of common areas or initial planting installations at home and/or site structures." Mr. Marsh stated this would put more onus on the developer and added that there are certain plants the City would not permit in public areas because they are not on the approved species list but some sub-contractors have planted some of those species at houses.

(d)(16) - Primary conservation areas. The change in this section requires a five-year maintenance plan for all open space would be the responsibility of the developer unless it is otherwise stated in the Development Agreement. Mr. Marsh said this is how those naturalized spaces are to be maintained and has been an issue that has come up in developments like Heritage Preserve in terms of what the



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maintenance plan was going to be and whose responsibility it is. Since it has not been clear, some invasive species were taking over and the City did take the lead on removing some of those but going forward that plan and process would be part of what will be initially submitted with the application. Ms. Cottone asked what happens after five years. Mr. Marsh replied that after the five years, eventually those open spaces get transferred to the City, or Metroparks or in some cases there are areas that go to the Home Owners Association (HOA). These other bodies would then have the responsibility and would have to maintain them. Ms. Cottone inaudible. Mr. Marsh replied that is addressed later and the different entities that the open space could be transferred to and once that transfer happens, the onus would be on them to maintain it. For example, if the City accepted some areas of City parkland, it would be the City's maintenance responsibility.

(d)(26) Mr. Marsh mentioned the sentence "Except for density, and the percentage of required open space, the applicant may request a modification from the City of the development standards set forth in this chapter." is in there to make the density and the open space two key elements that are not up for negotiation.

(e)(4) Open space dedication. Mr. Marsh reported this is one of the biggest changes. A minimum of 70 percent open space and 50 percent will be naturalized open space. There is a very long definition and examples of what would qualify as naturalized open space and a definition and examples of what would qualify as open space but not be considered naturalized open space. He noted this is the largest change and addresses two things: 1) it makes the City Code somewhat stricter than the Big Darby Accord and 2) it is one area that clarifies definitions that have had different interpretations in the past specifically the open space. Mr. Marsh stated he spoke to three developers (MI Homes, Fischer Homes and Epcon) to get their opinion. MI Homes felt they could meet it, Epcon felt their product makes it meetable as well and Fischer Homes had reservations and when he pushed them, they said 60 percent may be what their upper limit would be. President Tarazi inaudible. Mr. Marsh noted another piece of this section is the sentence that says "Required open space may be located off site, provided it is within the Darby Accord Planning Area and is consistent with the City's greenbelt concept." He stated this requires some additional components. Mr. Marsh added it would eventually require a resolution passed by Council that defines the greenbelt concept and requires additional collaboration with Brown Township since that is the entity that could be impacted in terms of communication and possibly providing them with some rough, approximate planning of things as well. Ms. Vermillion asked if something like that could be added in writing. Mr. Marsh replied it could, but does not know how that would read.

Mr. Carrier inaudible. Mr. Marsh replied there is one item and one question that Council needs to discuss as a group. One element is the idea that the whole Darby Accord is about the watershed and while the City has to look at this on the level of whatever parcels are being brought to the City for zoning and what the City is really trying to do is protect the Darby. If the City gets green space that helps that and benefits the City through creating the greenbelt on the western edge of the City, which would be a benefit to both the Darby and the City. Mr. Marsh added that most likely from a developer creating an attractive place to buy a house, they will try to incorporate some of those things in. They would have to if there are tier 1 or tier 2 lands in the tract and would have to stay. He stated Mr. Carrier brought up the ESC letter and that should be discussed further about potentially limiting the percentage of space that could be off site. There could be some benefits to getting space off site but it may not be appropriate to say someone could get all 70 percent of the space off site and is a detail that needs to be worked through that is not in this document now, but could be amended.

Mr. Carrier mentioned that in his conversations with Brown Township leadership, on the density bonus and density calculation, the City does not allow or limits multi-family housing. He noted in Heritage Preserve, there are homes on the tracts, the green space and then on the backside the developers built three to four stories high to create enough density and cash flow for them to be able to finance the walking paths and things that were required with the conservation development. He asked how is the City going to manage the purchase of land outside the contract area from them having the developer wanting to build multi-family inside the contract area. Mr. Marsh replied there is nothing in this rewrite that prohibits or encourages multi-family. Mr. Carrier stated if they are using the density bonus tracts for the



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greenbelt, it allows them to come back for the density they need to make their project work and what they fall back to is multi-family to do so and there is nothing to stop that. Mr. Marsh agreed there is nothing at all about multi-family. Mr. Carrier remarked that this does not fly with the community. He added it was astounding the amount of heat the City took from the community regarding the backside of the Heritage Preserve development and is actually one of the reasons he took the stance he did on the development of apartments using TIFs. He feels that more research is needed because he does not necessarily understand the benefit to the City. Mr. Carrier added the City has to be very careful to not bring density into the watershed that the community does not want because he is still trying to connect the dots on how that density benefits the City. He sees that it could benefit the watershed by moving it to the east and pumping everything to the east for treatment versus the Warnock development where there are two to three acre tracts that are going into the septic. He noted the township trustees tell him that the septic is better and not like it used to be. Mr. Carrier stated his point is that the preference is to treat those things and move it this way versus pumping it into the ground, which puts it in the watershed but he does not understand how that benefits the City. Mr. Marsh replied that it could be addressed in this but the question of permitting multi-family was not part of the scope they were evaluating and is a separate question. Mr. Carrier questioned if more residential in the Darby Accord area benefits the City at all. Mr. Marsh replied everyone is aware residential creates more strain on services. He mentioned that the previous Comprehensive Plan, which saw the west area of Hilliard as all residential, and this was approached with that in mind. What is in an earlier and hopefully accelerated phase is essentially a commercial conservation district zoning code and this would be the residential conservation district zoning code. They could then look at things like potentially incentivizing commercial by making the open space 60 percent versus 70 percent. Mr. Marsh explained this just impacts any proposal for a residential development but does not mean they are not currently looking at and possibly incentivizing other types of development that are not residential to do more from a City standpoint as far as taxes.

Vice President Vermillion stated that just having this discussion is not saying that the City wants a bunch of residential development out there and is not how she is reading this but Council just needs to have a discussion. Mr. Carrier added and Council needs an understanding, because it is unclear to him, of how this benefits the City and the watershed because any additional residential development on the watershed creates pressure on the watershed. He mentioned asking if the ESC could look at this because Madison County is packing developments in, Plain City just got their EPA permit to double the treatment plant and everything the City is doing is completely different than north of the City on the same watershed, which is a little frustrating. He asked in what ways is this plan going to help the City and if it is, is it helping the watershed. He remembers asking the question before if everything the City has done to date helped the watershed so far. He received some interesting information from Vice President Vermillion but he has not heard from the experts on the conservation development that has been done and did it make a difference because you hear that things are still endangered or dying off but he has not heard from the experts or any studies on that. Ms. Cottone noted that the water quality is improving. Mr. Carrier asked is it because of what the City is doing or is that known. Ms. Cottone replied that she could not say that. Ms. Hale asked if there is a report on that information. Ms. Cottone replied that she was on a canoe trip on the Darby with people who talked about the mussels and that the water quality was better.

Ms. Crandall explained that to the point that if this helps the watershed, she thinks that the idea behind some of this was to up that amount of open space and institute a greenbelt that protects as far west as the City can get, which has a large impact, large open space and provides a recreational opportunity for City residents and other residents. If there is going to be development out there, how can the City best protect it. She noted as Mr. Marsh stated commercial is probably the preferred route to look at first, as well as high levels of open space and the same greenbelt idea. Ms. Crandall addressed the question of having only a certain percentage or limit on the amount that can be outside the development area. She seemed to recall an earlier version that she believed limited it to only up to 20 percent of the open space could be attributed to anything not adjacent to parcel being developed. Mr. Carrier asked what does that equate to in units and if that depends on the size. He added it is contingent with the size of the tract. Mr. Marsh stated that is one of the open ended questions as far as what is that number or limitation.

Mr. Teater clarified that the space outside would still have to fall under however the City defines the

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greenbelt. Mr. Marsh agreed and noted the benefit from the City standpoint is having it be there versus buying land west of Plain City. He added the long-term hope is to be able to take the greenbelt or open space all the way to the west side through a trail system. President Tarazi asked if the greenbelt extends beyond the City boundaries. Mr. Marsh replied that eventually some of the greenbelt could be, obviously someone would not want to identify specific parcels in a piece of legislation but is possible with the layout of some of these things that a piece could come outside the City boundaries. President Tarazi remarked that it would be outside the contract area and the City boundary and are telling developers to go buy land somewhere in exchange to be able to build in the City. Mr. Marsh agreed. President Tarazi asked if Mr. Marsh feels there is a need to get a formal agreement with those government entities that actually manage those other spaces. Mr. Marsh agreed. President Tarazi then asked how that process would work. Mr. Marsh replied as he sees it, there would be a resolution for the greenbelt then the City would want to have a discussion with Brown Township so they are on the same page of what the greenbelt is. President Tarazi asked if a formal agreement would come before this because essentially what we are doing is exporting certain development policy outside of the City. Mr. Marsh felt that it could be concurrent with this because this could not be passed without some information because it has to be consistent with the City's greenbelt concept. He noted that it is possible the Comprehensive Plan could contain some information related to this as well that which could be pointed back to if there was not a separate resolution. He feels it would be better to do it with a resolution and have Brown Township being aligned with what is being proposed and may be something Brown Township would vote on as well. This is still in the conversation phase. President Tarazi asked if the next steps would be to invite Brown Township for a joint meeting to discuss the greenbelt. Mr. Marsh said it could be a joint meeting or a smaller meeting to start to form some framework and then each entity bring that to their respective bodies. President Tarazi asked what is everyone's preference. Ms. Cottone stated a conversation would be helpful to get started. President Tarazi noted that clearly there is groundwork that is needed which ultimately builds to a joint meeting to get the final product to discuss. Mr. Marsh replied that it may not be necessary for a joint meeting, but may be the outcome that is needed. He asked if Council would give him the authority to arrange for him and Ms. Crandall to meet with Brown Township to discuss that specific topic. Mr. Teater mentioned that the greenbelt is such a conceptual idea right now that it might be best to have a meeting with fewer people in order to bring some clarity before bringing it to the groups. Ms. Cottone agreed. President Tarazi said they are saying the same thing because that needs to happen first or an initial conversation and then that ultimately leads to either independently hearing the presentation or everyone getting together to hear the same presentation as to the outcome.

President Tarazi, seconded by Mr. Carrier, moved to direct Mr. Marsh and Ms. Crandall for purposes of negotiating the greenbelt concept and coming back to Council with anything that relates to that.

STATUS:	Approved (7-0)
MOVER:	Omar Tarazi
SECONDER:	Les Carrier
AYES:	Tarazi, Vermillion, Carrier, Cottone, Hale, Marsh, Teater

Mr. Teater thanked Mr. Marsh for the excellent detail and explanation of open space because it has been evasive over the years.

Mr. Marsh reported other big changes are in part of section (5)(D) and is another area they tried to clarify a point of difference in interpretation in the past. Basically, it is saying that all of these developments are going to have some sort of pond, which could be counted towards open space but is not naturalized open space. If they want it to count towards naturalized open space, they would have to take additional steps to create a wetland type ecology. Regarding the email he sent over the weekend on density bonuses, it slipped by him that they did put a 1.5 cap and not 2. He added there is a list of four things that deserves some additional conversation at some point, but there is a list of four ways proposed right now where potentially density bonuses could be awarded. There are other ideas that have been floated by him like a density bonus for affordable housing or a density bonus for housing that does not draw a lot of City services so there are other things that could be discussed.

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Ms. Hale stated she would like to hear some of the developers' responses or replies to these proposals. President Tarazi suggested that when this is finished, the City send them an email or ask them for a written response. Mr. Marsh replied his intent is when this eventually gets to Council in ordinance form, he believes it is something that a number of developers may be interested in and may even provide a positive recommendation.

Ms. Vermillion reported that the density bonuses add up to .4 but it states 1.5 as a maximum and asked if they were leaving room for other things. Mr. Marsh replied that particularly for number one, for every additional 10 percent someone could get .1 but if someone did 20 percent more open space they could get .2. Ms. Vermillion asked if that is naturalized open space or regular open space. Mr. Marsh replied that is something that slipped through but he was thinking of that as naturalized but that needs to be something that is inserted. Vice President Vermillion commented that words like significant or extraordinary really do not mean anything and believes they need to be better defined as well as other sustainable design elements. They are very broad and leaves it up to the discretion of Planning and Zoning and she is not sure she is comfortable with that.

Due to time constraints, President Tarazi ended the discussion.

ITEMS FOR DISCUSSION - None

Mr. Teater, seconded by Mr. Carrier, moved to adjourn the meeting by Voice Vote.

MOVER:	Andy Teater
SECONDER:	Les Carrier
AYES:	Tarazi, Vermillion, Carrier, Cottone, Hale, Marsh, Teater

ADJOURNMENT – 7:03 PM

Omar Tarazi, President
Council Committee of the Whole

Diane Werbrich, MMC
Clerk of Council

Approved: _____

Minutes Acceptance: Minutes of Feb 13, 2023 6:00 PM (Approval of Minutes)

Flavored and Menthol Tobacco Presentation

Council Memo: Information Only

Subject: Amending Codified Ordinances re: Banning Flavored Tobacco
From: Michelle Crandall, City Manager
Initiated by: Kelly Clodfelder, Staff Attorney
 Dawn Steele, City Prosecutor
Date: February 27, 2023

Summary

The attached document shows the recommended changes to the City’s Codified Ordinances in order to ban flavored tobacco products from being sold in the City.

The specific changes are outlined in the table below:

Code Section	Description of Change to Code Language
537.16(a)(1)(E)	Adds a definition of Flavored Tobacco Product
537.16(a)(2)(G)	Provides that no manufacturer, producer, retailer, etc. is permitting to give sell, or otherwise distribute flavored tobacco products
537.16(a)(6)(A)	Adds the reference to 537.16(a)(2)(G) to the penalty section of the code

Attachments

- Draft Code Amendment to Section 537.16 of the City’s Codified Ordinances

537.16 ILLEGAL DISTRIBUTION OF CIGARETTES, OTHER TOBACCO PRODUCTS, OR ALTERNATE NICOTINE PRODUCTS; TRANSACTION SCANS.

(a) *Illegal Distribution of Cigarettes, Other Tobacco Products, or Alternative Nicotine Products.*

(1) As used in this section:

- A. *"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 twenty-one years of age or older.
- B. *"Alternative nicotine product."*
1. Subject to subsection (a)(1)B.2. of this section, an electronic smoking device, vapor product, 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).
- C. *"Cigarette."* Includes clove cigarettes and hand-rolled cigarettes.
- D. *"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.
- E. *"Flavored Tobacco Product."* Means any tobacco product that imparts a taste or smell, other than the taste or smell of tobacco, either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, or any candy, dessert, alcoholic beverage, herb, or spice.
- F. *"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).
- FG.** *"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 ORC 4507.50 to 4507.52 that shows that a person is eighteen years of age or older.
- GH.** *"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).

- H.I. "Vapor product." Means a product, other than a cigarette or other tobacco product as defined in ORC Chapter 5743, that contains or is made or derived from nicotine and that is intended and marketed for human consumption, including by smoking, inhaling, snorting, or sniffing. The phrase includes any component, part, or additive that is intended for use in an electronic smoking device, a mechanical heating element, battery, or electronic circuit and is used to deliver the product. 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). The phrase includes any product containing nicotine, regardless of concentration.
 - H.J. "Vending machine." Has the same meaning as "coin machine" in ORC 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:
- A. Give, sell, or otherwise distribute cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to any person under twenty-one years of age;
 - 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 legibly printed sign in letters at least one-half inch high 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;
 - C. Knowingly furnish any false information regarding the name, age, or other identification of any person under twenty-one years of age with purpose to obtain cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes for that person;
 - D. Manufacture, sell, or distribute in this state 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;
 - 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.
 - G. Give, sell, or otherwise distribute flavored tobacco products.
- (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 persons under twenty-one years of age are not generally permitted access;

- C. Any other place not identified in subsection (a)(3)A. or B. of this section, upon all of the following conditions:
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.
 3. A clearly visible notice is posted in the area where the vending machine is located that states the following in letters that are legibly printed and at least one-half inch high: "It is illegal for any person under the age of twenty-one to purchase tobacco or alternative nicotine products."
- (4) The following are affirmative defenses to a charge under subsection (a)(2)A. of this section:
- A. The person under twenty-one years of age was accompanied by a parent, spouse who is twenty-one years of age or older, or legal guardian of the person under twenty-one years of age.
 - B. The person who gave, sold, or distributed cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to a person under twenty-one years of age under subsection (a)(2)A. of this section is a parent, spouse who is twenty-one years of age or older, or legal guardian of the person under twenty-one years of age.
- (5) It is not a violation of subsection (a)(2)A. or B. of this section for a person to give or otherwise distribute to a person under twenty-one years of age cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes while the person under twenty-one years of age is participating in a research protocol if all of the following apply:
- A. The parent, guardian, or legal custodian of the person under twenty-one years of age has consented in writing to the person under twenty-one years of age participating in the research protocol.
 - B. An institutional human subjects protection review board, or an equivalent entity, has approved the research protocol.
 - C. The person under twenty-one years of age is participating in the research protocol at the facility or location specified in the research protocol.
- (6) A. Whoever violates subsection (a)(2)A., B., D., E., ~~or F.~~, or G. or (a)(3) of this section is guilty of illegal distribution of cigarettes, other tobacco products, ~~or~~ alternative nicotine products, or flavored tobacco products. Except as otherwise provided in this subsection, illegal distribution of cigarettes, other tobacco products, ~~or~~ alternative nicotine products, or flavored tobacco products is a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of subsection (a)(2)A., B., D., E., or F., G. 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, or flavored tobacco products is a misdemeanor of the third degree.
- B. Whoever violates subsection (a)(2)C. of this section is guilty of permitting a person under twenty-one years of age to use cigarettes, other tobacco products, or alternative nicotine products. Except as otherwise provided in this subsection, permitting a person under twenty-one years of age 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 (a)(2)C. of this section or a substantially equivalent state law or municipal ordinance, permitting a person under twenty-one years of age 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 person under twenty-one years of age in violation of this section and that are used, possessed, purchased, or received by a person under twenty-one years of age in violation of ORC 2151.87 are subject to seizure and forfeiture as contraband under ORC Chapter 2981. (ORC 2927.02)
- (b) *Transaction Scan.*
- (1) For the purpose of this subsection (b) and subsection (c) of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning:
- A. *"Card holder."* 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.
 - B. *"Identification card."* An identification card issued under ORC 4507.50 to 4507.52.
 - C. *"Seller."* 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 subsection (a) of this section.
 - D. *"Transaction scan."* 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.
 - E. *"Transaction scan device."* 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.
- B. If the information deciphered by the transaction scan performed under subsection (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. Subsection (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 ORC 4301.61(C) apply to the use of transaction scan devices for purposes of this subsection (b) and subsection (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 subsection (b)(4)A. of this section, except for purposes of subsection (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 subsection (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 subsection (c) of this section or another section of these Codified Ordinances or the Ohio Revised Code.
- (5) Nothing in this subsection (b) or subsection (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.
- (6) Whoever violates subsection (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 one thousand dollars (\$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. (ORC 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 subsection (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 subsection (c)(1) of this section, the trier of fact in the action for the alleged violation of subsection (a) of this section shall consider any written policy that the seller has adopted and

- implemented and that is intended to prevent violations of subsection (a) of this section. For purposes of subsection (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 twenty-one 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.
- (3) In any criminal action in which the affirmative defense provided by subsection (c)(1) of this section is raised, the Registrar of Motor Vehicles or a Deputy Registrar who issued an identification card under ORC 4507.50 to 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. (ORC 2927.022)
- (d) *Shipment of Tobacco Products.*
- (1) As used in this subsection (d):
 - A. "*Authorized recipient of tobacco products*" means a person who is:
 1. Licensed as a cigarette wholesale dealer under ORC 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 ORC 5743.71.
 - B. "*Motor carrier.*" Has the same meaning as in ORC 4923.01.
 - (2) The purpose of this subsection (d) is to prevent the sale of cigarettes to minors and to ensure compliance with the Master Settlement Agreement, as defined in ORC 1346.01.
 - (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.
 - 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 one thousand dollars (\$1,000) for each violation of subsection (d)(3)A., (d)(3)B. or (d)(4) of this section. (ORC 2927.023)
- (e) *Furnishing False Information to Obtain Tobacco Products.*
- (1) No person who is eighteen years of age or older but younger than twenty-one years of age shall knowingly furnish false information concerning that person's name, age, or other identification for the purpose of obtaining tobacco products.
- (2) Whoever violates subsection (e)(1) of this section is guilty of furnishing false information to obtain tobacco products. Except as otherwise provided in this subsection, furnishing false information to obtain tobacco products is a misdemeanor of the fourth degree. If the offender previously has been convicted of or pleaded guilty to a violation of subsection (e)(1) of this section or a substantially equivalent state law or municipal ordinance, furnishing false information to obtain tobacco products is a misdemeanor of the third degree. (ORC 2927.024)