

BRUNSWICK CITY SAFETY & ENVIRONMENT COMMITTEE

Agenda

DECEMBER 18, 2023

6:15 PM

**or Immediately Following
Planning & Zoning Committee**

1. Discussion Items
 - (a) Tobacco Retail License
2. General Discussion
3. Adjournment

1
CITY OF BRUNSWICK, OHIO
ORDINANCE NO. _____

BY:

AN ORDINANCE ESTABLISHING CHAPTER 868 OF THE CITY OF BRUNSWICK CODIFIED ORDINANCES RELATIVE TO THE LICENSE OF TOBACCO RETAIL ESTABLISHMENTS.

WHEREAS: This Council recognizes the health risks associated with nicotine and tobacco use and addiction, especially for young people.

WHEREAS: US Food and Drug Administration data indicates that one in five Ohio retailers illegally sell nicotine and tobacco products to underage buyers.

WHEREAS: Tobacco retailers may choose to concentrate near schools and in low-income neighborhoods.

WHEREAS: Tobacco use is the foremost preventable cause of premature death in the U.S., causing a half million deaths annually, and has been responsible for 20.8 million premature deaths in the U.S. since the first U.S. Surgeon General's report on smoking in 1964.

WHEREAS: This Council recognizes that young people are particularly susceptible to the addictive properties of tobacco and nicotine, and that youth who begin using tobacco and nicotine products are more likely to become lifelong users, reversing previous progress in the reduction of the overall tobacco use rate.

WHEREAS: This Council has the authority to protect life, health and safety by requiring tobacco and nicotine retailers in the City to obtain and maintain a tobacco retailer license as a condition for engaging in the business of selling tobacco products.

WHEREAS: A tobacco retailer license is an evidence-based strategy to reduce initiation to nicotine and tobacco through improved compliance with minimum legal sales age and other important sales regulations.

WHEREAS: A tobacco retailer license is a regulatory tool that further enables the City to monitor nicotine and tobacco sales, fund compliance efforts, and create effective penalty and suspension structures for repeated violations.

WHEREAS: Tobacco retailer license laws in other communities have been effective in reducing the number of illegal nicotine and tobacco sales to underage purchasers.

WHEREAS: THE COUNCIL OF THE CITY OF BRUNSWICK HEREBY ORDAINS:

SECTION 1: That the Chapter 868 of the Codified Ordinances titled “Tobacco Retailer Licenses” is hereby established to read as follows:

“868.01 DEFINITIONS.

(A) Definitions. For the purposes of this Section, the following definitions shall apply:

- (1) “Applicant” means the applicant for a license under this Chapter, including any person or entity that holds an interest in the applicant.
- (2) “Compliance Check” means the system utilized by the Licensing Agent to investigate and ensure that those authorized to sell Tobacco Products are following and complying with the requirements of this Chapter. Compliance checks may be conducted by the Licensing Agent, the City of Brunswick and/or other units of government or designated agencies for educational, research and/or training purposes, of for investigating and enforcing federal, state and local laws pertaining to Tobacco Products.
- (3) “Distribute” means giving, providing, or delivering Tobacco Products.
- (4) “Educational Facility” means any public or private educational facility, including, without limitation, child-care facilities, nursery schools, pre-schools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, junior colleges and universities, trade schools, tutorial services and commercial learning centers.
- (5) “Electronic Smoking Device” means any device that may be used to deliver any aerosolized or vaporized nicotine or any other substance 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 to such a device, whether or not sold separately, and also includes any substance intended to be aerosolized or vaporized by such device, whether or not the substance contains nicotine. 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.
- (6) “Licensee” means the holder of a valid Tobacco Retailer License.
- (7) “Licensing Agent” means the City of Brunswick or its duly authorized designee.
- (8) “Person” means any natural person.

- (9) “Premises” means the location to which any License issued under this Chapter has been issued.
- (10) “Public Place” means any area in which the public is invited or permitted, including, without limitation, any public park or playground, but excluding any public right-of-way.
- (11) “Purchaser” means any person who obtains or attempts to obtain a Tobacco Product.
- (12) “Religious Institution” means a church, synagogue, temple or building which is used primarily for religious worship and related religious activities.
- (13) “Sale”, “Sell” or “Sold” means transferring, or offering or attempting to transfer, a Tobacco Product for money, trade, barter, exchange or other consideration.
- (14) “Tobacco” or “Tobacco Product(s)” means: (a) any product containing, made of, or derived from tobacco or containing any form of nicotine that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, dissolved, inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, cigar, pipe tobacco, chewing tobacco, snuff or snus; (b) any Electronic Smoking Device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; (c) any component, part, or accessory of (a) or (b), whether or not any of these contain tobacco or nicotine, including, but not limited to, filters, rolling papers, blunt or hemp wraps, or pipes. 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.
- (15) “Tobacco Retailer” means any individual, firm, partnership, joint venture, association, joint stock company, corporation, unincorporated business entity, or any other group acting as a unit that owns a business where Tobacco Products are available for sale, including the employees thereof. Tobacco Retailer, as used herein, includes any manufacturer, producer, distributor or wholesaler of Tobacco Products. Tobacco Retailer does not mean the employees or agents of an owner of a business where Tobacco Products are available to the general public.
- (16) “Tobacco Retail Establishment” means any place of business where Tobacco Products are available for sale, whether or not the business is open to the general public.

- (17) “Tobacco Retailer License” or “License” means a license issued by the Licensing Agent or its authorized designee for the sale of Tobacco Products pursuant to this Chapter.

868.02 LICENSE REQUIRED/APPLICATION.

- (A) License Required. No Person, Tobacco Retailer or Tobacco Retail Establishment shall sell, offer to sell or distribute any Tobacco Product without first having obtained a License from the Licensing Agent.
- (B) Application. An application for a License to sell or distribute Tobacco Products must be made on a form provided by the Licensing Agent. The application must contain the full legal and doing business as name of the Applicant, the location of the Premises, the Applicant’s business address, phone number and email address, the name and social security number of each and every person(s) holding any interest in the Applicant (if the Applicant is not a natural Person), confirmation that the Applicant and all employees of the Applicant have completed the Instruction Program as required herein, and such additional information as may be required by the Licensing Agent. If the Licensing Agent determines that an application is incomplete, the application will be returned to the Applicant with notice of the deficiency and the requisite information necessary to make the application complete.
- (C) Term. The term of any License issued pursuant to this Chapter is for a period of one (1) year commencing on the first day of March up to and including the last day of February. Any License issued after the first day of March will expire on the last day of February and remain subject to the full, non-prorated License fee regardless of the date of issuance.
- (D) Violation; Suspension; Revocation. Any License issued under this Chapter may be suspended or revoked as follows:
- (1) Any Licensee that violates any provision of this Chapter, or any other federal, state or local law relative to the distribution or sale of Tobacco Products, shall be subject to the penalties prescribed in this Chapter and/or Codified Ordinance Section 636.19.
 - (2) A previous violation of any other federal, state or local law relating to the distribution or sale of Tobacco Products that occurred within the previous thirty-six (36) months shall be considered a prior violation when determining any penalty under this Chapter and/or Codified Ordinance Section 636.19.
- (E) Transfers. All Licenses issued under this Chapter are valid only with respect to the Licensee and for the Premises for which same was issued. The transfer of any License to any other Person, Tobacco Retailer, Tobacco Retail Establishment and/or

other Premises is prohibited with the exception that the change in ownership of a Licensee shall not be deemed to constitute a transfer of a License.

- (F) Display. All Licenses must be posted and displayed at all times in plain view of the general public of the Tobacco Retail Establishment. Failure to properly display any License issued pursuant to this Chapter is a violation hereof.
- (G) Renewals. The renewal of a License issued pursuant to this Chapter shall be subject to the same application process as provided hereinabove. The request for renewal must be made at least thirty (30) days prior to the expiration of the current License. The issuance of a License pursuant to this Chapter is a privilege and does not entitle the Licensee to the automatic renewal thereof. The failure to timely renew and/or the denial of the renewal of a License previously issued pursuant to this Chapter shall result in the revocation thereof.
- (H) Instructional Program. As a condition of the issuance of a License pursuant to this Chapter, the Licensee shall complete and ensure that all employees complete an annual training program pre-approved by the Licensing Agent related to the legal requirements for the distribution or sale of Tobacco Products. Documentation evidencing compliance with this requirement is a condition precedent to the issuance of any License or renewal thereof.

868.03 DENIAL OF LICENSE.

- (A) The Licensing Agent shall deny an application for a License, or renewal thereof, in the following circumstances:
- (1) The Applicant is under the age of 21.
 - (2) The Applicant has been convicted of any violation of a federal, state or local law relating to the distribution or sale of Tobacco Products within the previous five (5) years.
 - (3) The Applicant has had a license issued under this Chapter revoked within the previous two (2) years.
 - (4) The Applicant fails to provide the information required on the application or provides false, incomplete or misleading information.
 - (5) The Applicant is prohibited by federal, state or local law from distributing or selling Tobacco Products.
 - (6) The Applicant is delinquent on the payment of any fee, tax or penalty imposed by this Chapter or any other provision of the Codified Ordinances.

- (7) The maximum number of available licenses under this Chapter have been issued.
 - (8) The Premises is not in compliance with the proximity requirements contained in this Chapter.
 - (9) The Applicant has been found to have been distributing or selling Tobacco Products without a License issued pursuant to this Chapter on two (2) occasions within any twelve (12) month period.
- (B) In the event a License is mistakenly issued or renewed, the Licensing Agent may revoke same upon the discovery that the applicant was ineligible under this Chapter. In such event, the Licensing Agent will provide the Licensee with notice of revocation along with information as to Licensee's rights of appeal consistent with this Chapter.
- (C) If a License is suspended or revoked pursuant to this Chapter, the License fee is deemed forfeited and non-refundable.

868.04 LICENSE FEE; FINES.

- (A) No License shall be issued under this Chapter until the appropriate, non-refundable License fee is paid in full.
- (B) The fee for a License (or renewal thereof) under this Chapter shall be a minimum of \$600.00 payable to the Licensing Agent. The Licensing Agent shall have the authority to adjust the fee as deemed necessary, but in no event shall the fee be less than \$600.00.
- (C) License fees and fines collected pursuant to this Chapter shall be for the benefit of and payable to the Licensing Agent and shall be used to fund tobacco retail licensure compliance and enforcement measures, including, but not limited to, issuing Licenses, administering the licensing program, tobacco retailer education, tobacco retailer inspection and compliance checks, documentation of violations and appellate proceedings. Funds may also be designated for other tobacco control, prevention and education programs as determined by the Licensing Agent.

868.05 NUMBER OF LICENSES.

- (A) The total number of Licenses issued within the City shall be limited to one (1) License for each five hundred (500) residents of the City, as established by the most recent Federal Decennial Census. Notwithstanding the foregoing:
- (1) Any Person or Tobacco Retailer lawfully engaged in the operation of a Tobacco

Retail Establishment that is in full compliance with all applicable law as of the effective date of this Chapter shall be entitled to a License subject to full satisfaction of the requirements of this Chapter; and

- (2) City Council shall have the authority, as part of a duly approved Development Agreement as otherwise required by the Codified Ordinances, to authorize the Licensing Agent to issue additional Licenses, subject to full satisfaction of the requirements of this Chapter, to any Applicant that proposes the construction of a new, single-tenant commercial/retail structure.
- (B) The Licensing Agent shall maintain a list of all applications for Licenses which, if issued, would exceed the maximum number of licenses permitted pursuant to this Chapter. In the event of revocation and/or non-renewal of a License, the Licensing Agent may proceed with the processing of applications on file in the order in which they were received.

868.06 PROXIMITY REQUIREMENTS.

- (A) No License shall be granted under this Chapter to an Applicant that is located within 1,000 feet of any existing Licensee, as measured from the nearest property lines of each respective property. This restriction does not apply to any Applicant that holds a state tax license to sell Tobacco Products at the same Premises for at least one (1) year prior to the effective date of this Chapter.
- (B) No License shall be granted under this Chapter to an Applicant that is located within 3,500 feet of any Educational Facility, Religious Institution or Public Place, as measured from the nearest property lines of each respective property. This restriction does not apply to any Applicant that holds a state tax license to sell Tobacco Products at the same Premises for at least one (1) year prior to the effective date of this Chapter.

868.07 COMPLIANCE WITH CODIFIED ORDINANCE SECTION 636.19.

- (A) All Licensees shall comply with the requirements of Codified Ordinance Section 636.19, which is incorporated herein by reference, as same may be amended from time to time.

868.08 COMPLIANCE CHECKS AND INSPECTIONS.

- (A) The Tobacco Retail Establishment for which any License is issued pursuant to this Chapter shall be open to inspection by the Licensing Agent during regular business hours. The Tobacco Retail Establishment shall be subject to not less than two (2) unannounced compliance checks per License year which may include, without limitation, checks to verify that the Tobacco Retail Establishment:

- (1) Maintains and properly displays the License to distribute or sell Tobacco Products; and
- (2) Does not permit sale to persons under the age of 21.
- (B) Unannounced follow-up compliance checks of all non-compliant Tobacco Retail Establishments shall be conducted by the Licensing Agent within three (3) months of any violation of this Chapter.
- (C) The results of all compliance checks shall be published annually and made available to the public by the Licensing Agent.

868.09 PENALTY.

Notwithstanding any other penalty that may be imposed by applicable federal, state or local law, including, without limitation, those penalties prescribed by Codified Ordinance Section 636.19, any Person, Tobacco Retailer or Tobacco Retail Establishment that violates any provision of this Chapter or any provision of Codified Ordinance Section 636.19 shall be subject to the following penalties:

- (A) For a first violation, a fine of \$500.00.
- (B) For second violation within a thirty-six (36) month period, a fine of \$1,000.00 and a License suspension of thirty (30) days.
- (C) For a third violation within a thirty-six (36) month period, a fine of \$1,500.00 and License suspension of sixty (60) days.
- (D) For a fourth violation within a thirty-six (36) month period, a fine of \$2,000.00 and License revocation.

Any Person, Tobacco Retailer or Tobacco Retail Establishment found to be selling Tobacco Products without the License required under this Chapter shall be subject to the following penalties:

- (A) For a first violation, a fine of \$1,000.00.
- (B) For a second violation and each subsequent violation within a thirty-six (36) month period, a fine of \$2,000.00 per occurrence and ineligibility for a License for a period of three (3) years.

868.10 SEVERABILITY.

The provisions of this Chapter are severable, and if any provision, clause, sentence or paragraph of this Chapter or the application thereof to any person or circumstances are held by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such a ruling shall not affect the other parts of this Section that can be given effect.

868.11 NOTICES; APPEALS.

In the event that a violation is issued or a License is denied, suspended or revoked pursuant to this Chapter, the Licensing Agent shall inform the Applicant and/or Licensee in writing to be sent by certified mail, return receipt requested, to the address of the Applicant/Licensee as contained in the application. Such notice shall provide that the Applicant and/or Licensee shall have a right to appeal any such decision directly to the Licensing Agent, which appeal shall be in writing, contain all operative facts in support of such appeal and be filed with the Licensing Agent within thirty (30) days of the date of the notice. The determination of the Licensing Agent shall be considered a final order.”

SECTION 2: The provisions of this Ordinance shall be effective and enforceable as of March 1, 2024.

SECTION 3: That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 1st Reading _____
2nd Reading _____
3rd Reading _____

ADOPTED: _____ AYES _____ NAYS _____

ATTEST: _____
Clerk of Council
Laura E. Timura